

## Proposed Filing - Coversheet

### **Instructions:**

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” ([CVR 04-000-001](#)) adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms and enclosures with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms shall be submitted to the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of Proposed Filing Coversheet will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record. Publication of notices will be charged back to the promulgating agency.

\*\*\*\*\*

**PLEASE REMOVE ANY COVERSHEET OR FORM NOT REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!**

\*\*\*\*\*

**Certification Statement:** As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

**Independent School Program Approval Rules**

/s/ Jennifer Deck Samuelson

, on 9/22/23

(signature)

(date)

Printed Name and Title:

Jennifer Deck Samuelson, Chair  
State Board of Education

RECEIVED BY: \_\_\_\_\_

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Filing Confirmed

1. TITLE OF RULE FILING:

**Independent School Program Approval Rules**

2. ADOPTING AGENCY:

State Board of Education

3. PRIMARY CONTACT PERSON:

*(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).*

Name: Jennifer Deck Samuelson

Agency: State Board of Education

Mailing Address: 1 National Life Drive Davis 5, Montpelier,  
VT 05602-2501

Telephone: 802-828-0047 Fax: 802-828-6430

E-Mail: [SBE.PublicComment@vermont.gov](mailto:SBE.PublicComment@vermont.gov)

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://education.vermont.gov/state-board-councils/state-board/rulemaking>

4. SECONDARY CONTACT PERSON:

5.

*(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).*

Name: Sarah Buxton

Agency: Special Counsel - State Board of Education

Mailing Address: 44 East State Street, Montpelier, VT 05602

Telephone: 802-223-1112 Fax: 802-223-6225

E-Mail: [sarah@tarrantgillies.com](mailto:sarah@tarrantgillies.com)

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

*(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE, EXEMPTING IT FROM INSPECTION AND COPYING?)* Yes

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

16 V.S.A. 166 (b) (8) (c)

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

Information not already in the public domain that is provided to the Agency and Board by independent schools as part of the approval and continued approval process is exempt from public inspection and copying and shall be kept confidential.

**7. LEGAL AUTHORITY / ENABLING LEGISLATION:**

*(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).*

16 V.S.A. §§ 164(14), 166(b); 2019 Act No. 1 Sec.1.

**8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:**

16 V.S.A. 164(14) directs the SBE to "adopt rules for the approval of independent schools."

**9. CONCISE SUMMARY (150 WORDS OR LESS):**

The proposed amendments to Rule Series 2200 are designed to incorporate the principles of 2019 Act No.1 to be consistent with legislative intent of both the Act and 16 V.S.A. §§ 164(14) and 166(b). These amendments also establish a method for recognizing school accrediting agencies, create an annual compliance assurance requirement for approved schools, require a method for evaluating whether an approved school is compliant with nondiscrimination requirements, clarify the process for accredited and non-accredited schools to apply and become approved, and reorganize the order of the rules for clarity and to align sequentially with the steps for school approval and reapproval.

**10. EXPLANATION OF WHY THE RULE IS NECESSARY:**

First, the amendments to the 2200 Rule Series are needed to incorporate the legislative intent of Act 1 (2019). Second, the rules follow up on Board's commitment to LCAR in 2022 that it would define and implement a method to recognize accrediting agencies. Third, further amendments provide requirements for ongoing approval (annual compliance assurance form) to remain consistent with legislative intent, including in 16 V.S.A. §2973. Finally, technical changes correct errors previously overlooked or required due to the reorganization of sections, and stylistic changes provide uniformity in reference to the Board, sections of the rules, and identification of subsections.

**11. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY AS DEFINED IN 3 V.S.A. § 801(b)(13)(A):**

The State Board reviewed at length the extensive recommendations submitted by the Act 1 Working Group

that were proposed and subsequently approved language that became part of the updates to the Education Quality Standards ("EQS") 2000 Rule Series. The Board identified principles of Act 1, as proposed in the EQS rules, that should apply to independent schools and subsequently proposed the revisions outlined in this filing. Changes related to the process for recognizing accrediting agencies was based on information and input from two major accrediting agencies that currently accredit most independent schools in Vermont, and one membership organization, as well as review of regulatory framework adopted by neighboring states. Other changes were proposed based on information received from the Agency and Board members involved in reviewing applications for approval. Finally, the rules were reorganized to be easier for an interested citizen to read, understand, and follow.

## **12. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:**

The Vermont Agency of Education Staff  
Vermont State Board of Education  
Independent Schools in Vermont seeking state approval  
Governance Boards, administrators, parents, students,  
teachers, and staff of Approved Independent Schools  
Local Education Agencies  
Advocacy Groups

## **13. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):**

The proposed changes amend the current 2200 Rule Series to align with the statutory intent of Act 1, develop a method for recognizing accrediting agencies, and implement an annual compliance assurance process. As a result, approved independent schools may have to invest in new or updated curriculum and in additional support or professional development for educators. The Agency of Education is assigned duties related to: (1) developing, tracking, and reviewing annual compliance assurance forms, (2) developing a standard method for assessing a school's compliance with nondiscrimination requirements, and (3) assisting the State Board in maintaining a public list of recognized accrediting agencies. The State Board anticipates that the overall economic impact of the rules to be minimal.

## **14. A HEARING WILL BE SCHEDULED.**

IF A HEARING WILL NOT BE SCHEDULED, PLEASE EXPLAIN WHY.

15. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING, PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION NEEDED FOR THE NOTICE OF RULEMAKING.

Date: 11/17/2023

Time: 11:30 AM

Street Address:

Zip Code:

URL for Virtual:

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_NjNiNmVjZjktMzAxYi00YWIwLThkNDUtYjBhYTVmMmMwODdm%40thread.v2/0?context=%7b%22Tid%22%3a%2220b4933b-baad-433c-9c02-70edcc7559c6%22%2c%22Oid%22%3a%22c533144c-43cf-4e1b-80e5-72db6ed391f5%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NjNiNmVjZjktMzAxYi00YWIwLThkNDUtYjBhYTVmMmMwODdm%40thread.v2/0?context=%7b%22Tid%22%3a%2220b4933b-baad-433c-9c02-70edcc7559c6%22%2c%22Oid%22%3a%22c533144c-43cf-4e1b-80e5-72db6ed391f5%22%7d)

[Click here to join the meeting](#)

[Download Teams](#) | [Join on the web](#)

**Or call in (audio only)**

+1 802-828-7667,,160796028# United States, Montpelier

Phone Conference ID: 160 796 028#

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Date: 11/21/2023

Time: 4:00 PM

Street Address:

Zip Code:

URL for Virtual:

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_MDc3NTU3NmEtYjEyMi00MzZmLWlxYzUtN2NjNDFkOTVhNGJi%40thead.v2/0?context=%7b%22Tid%22%3a%2220b4933b-baad-433c-9c02-70edcc7559c6%22%2c%22Oid%22%3a%22c533144c-43cf-4e1b-80e5-72db6ed391f5%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_MDc3NTU3NmEtYjEyMi00MzZmLWlxYzUtN2NjNDFkOTVhNGJi%40thead.v2/0?context=%7b%22Tid%22%3a%2220b4933b-baad-433c-9c02-70edcc7559c6%22%2c%22Oid%22%3a%22c533144c-43cf-4e1b-80e5-72db6ed391f5%22%7d)

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**Or call in (audio only)**

[+1 802-828-7667,,216027574#](tel:+18028287667216027574) United States, Montpelier

Phone Conference ID: 216 027 574#

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Date: 11/27/2023

Time: 6:30 PM

Street Address:

Zip Code:

URL for Virtual:

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_ZGMzNTczNTEtNWExMi00ZDVILWEyODItZjg3NTFjM2Y0MjYw%40thread.v2/0?context=%7b%22Tid%22%3a%2220b4933b-baad-433c-9c02-70edcc7559c6%22%2c%22Oid%22%3a%22c533144c-43cf-4e1b-80e5-72db6ed391f5%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZGMzNTczNTEtNWExMi00ZDVILWEyODItZjg3NTFjM2Y0MjYw%40thread.v2/0?context=%7b%22Tid%22%3a%2220b4933b-baad-433c-9c02-70edcc7559c6%22%2c%22Oid%22%3a%22c533144c-43cf-4e1b-80e5-72db6ed391f5%22%7d)

[Click here to join the meeting](#)

[Download Teams](#) | [Join on the web](#)

**Or call in (audio only)**

[+1 802-828-7667,,164349440#](tel:+18028287667164349440) United States, Montpelier

Phone Conference ID: 164 349 440#

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16. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING): 12/05/2023

17. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Independent School

Accrediting Agency

Education

Rule Series 2200

Equity

Ethnic Studies

Ethnic Group

Act 1

Social Group

Schools

Compliance Assurance

## Economic Impact Analysis

### **Instructions:**

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn’t appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

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### 1. TITLE OF RULE FILING:

**Independent School Program Approval Rules**

### 2. ADOPTING AGENCY:

State Board of Education

### 3. CATEGORY OF AFFECTED PARTIES:

*LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:*

The proposed amendments to Rule Series 2200 are designed to give effect to 2019 Act No.1 consistent with legislative intent of both the Act and 16 V.S.A. 164(14). These amendments also establish a method for recognizing school accrediting agencies, create an annual compliance assurance requirement for approved schools, require a method for evaluating whether an



approved school is compliant with nondiscrimination requirements, clarify the process for accredited and non-accredited schools to apply and become approved, and reorganize the order of the rules for clarity and to align with the steps for school approval and reapproval. The people or entities potentially affected by the adoption of these amendments and the estimated costs and benefits with their implementation are listed below:

Agency of Education and its employees: (1) developing, sending, tracking, and reviewing an annual compliance assurance form, based on forms already in use, (2) developing a standard method for assessing a school's compliance with nondiscrimination requirements, and (3) assisting the State Board in maintaining a public list of recognized accrediting agencies.

Independent Schools in Vermont seeking state approval: Heads of school, administrators, educators, and staff will need to annually certify compliance with laws and regulations related to operating an approved independent school. The extent to which these amendments will impact individual schools will depend on their existing policies and practices. For many schools, current curriculum and instruction, professional resources, learning environment, strategic planning, engagement processes, and reporting procedures already largely comply with the amended rules and the likely economic impact will be to redirect current investments to support the amended standards. Elsewhere, administrators and staff may need to:

1. Engage in additional and ongoing professional development to encourage and support the instructional strategies required by the rule.
2. Revise existing and develop new curricular content to align with the rule's amended requirements.
3. Align and create new policies to promote research, coordination and professional learning that supports the rule's implementation.

4. Develop methods for continually improving a culturally responsive pedagogy that critically examines and imparts a comprehensive historical and socially conscious understanding of the causes and effects of bias and discrimination and the impacts that unequal and unfair treatment of historically marginalized persons has had on individuals, groups of people, and society as a whole.

5. Modify learning environments to ensure equitable access to learning and instructional materials.

6. Review standardized methods for assessing compliance with nondiscrimination regulations and perform self (school)-assessment on at least an annual basis.

7. Review practices and policies to ensure that the school promotes an equitable, just, and inclusive community of adults and students, fosters a culture of learning, and inspires students to respect and value diversity in its many forms.

Approved Independent School governance boards and leadership teams may need to develop mechanisms to remain current in understanding and implementing recognized best practices and procedures related to the maintaining environments for safe and equitable treatment of students and school personnel.

The expense associated with these tasks will vary by school and as such cannot be precisely estimated, in part or in total. In some cases, schools will redirect existing resources to comply with the rules. Not all efforts to comply with the rule will require new spending on the part of schools.

Outside membership organizations or advocacy organizations may also incur an expense in their efforts to support approved independent school efforts to comply with and implement the rules. For instance, these organizations may elect to develop guidance and technical assistance materials, offer trainings, and provide individualized technical assistance. The extent to which membership organizations may engage in these activities is unknown. The expenses associated with providing additional services will be paid for by the

organization's membership fees and other fee-for-service arrangements with approved independent schools. School may elect to contract for these services or support, or the organizations may provide support free of charge, mitigating the economic impact to schools. Students and families may be required to select alternative enrollment options with tuition costs that are different from what a district anticipates or has budgeted.

The Vermont Agency of Education is responsible for monitoring compliance, assisting the Board in reviewing independent schools seeking approval, and enforcing nondiscrimination laws of the state. The Agency also provides administrative support to the Board, and thus will assist with the administration of the new process for recognizing accrediting agencies. It is anticipated that the Agency will organize resources, including compliance and administrative support, to meet the new requirements in the rules.

Accrediting Agencies that wish to be recognized in Vermont may incur some cost associated with the time and effort required to complete and submit new and renewed applications for recognition. Accrediting Agencies may also be required to take on slightly more administrative work if the Agency of Education, at its discretion, asks them to share information and evidence collected from a school as part of the accreditation review.

The Vermont State Board of Education anticipates minimal additional expense resulting from the proposed rule changes. However, members expect to spend more time reviewing applications for accrediting agencies and may spend time conducting hearings resulting from automatic investigations required to be performed by the Secretary if a school does not complete an annual compliance assurance as required. Board members are paid \$6.25 per hour for Board related work and receive \$50 to attend each meeting, so Board related costs may increase minimally.

#### 4. IMPACT ON SCHOOLS:

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:*

The proposed amendments are unlikely to create additional cost to public schools or local school districts. To the extent that the State Board and Agency of Education incur additional (minimal) cost for the administration of the rules, any increase in taxes would be negligible.

Students and families may be required to select alternative enrollment options with tuition costs that are different from what the district anticipates or has budgeted.

**5. ALTERNATIVES: *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.***

The State Board does not anticipate that the proposed rule will impact local school districts.

**6. IMPACT ON SMALL BUSINESSES:**

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):*

The State Board does not anticipate that the proposed rule will impact small businesses.

**7. SMALL BUSINESS COMPLIANCE: *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.***

No such evaluation is necessary because the State Board does not anticipate that the proposed rule will impact small businesses.

**8. COMPARISON:**

*COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:*

The amended rule aligns with the intention of Act 1. It includes requirements to provide instructional support strategies to educators and ethnic and social equity

studies. It's likely that even without these requirements, independent schools would be making similar investments and the rule provides content specific direction.

**9. SUFFICIENCY: *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.***

The State Board of Education collected information on the potential economic impact of the rule through testimony (oral and written) provided to its EQS Committee and received written feedback from the Heads of School of four separate approved independent schools. The Board also collected information on the impact of the changes to the Agency from informal conversations with Agency officials. The Board heard testimony from two accrediting agencies, and written feedback from one membership organization, on the likely impact of changes to the process by which accrediting organizations will be recognized.

## Environmental Impact Analysis

### **Instructions:**

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

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1. TITLE OF RULE FILING:

**Independent School Program Approval Rules**

2. ADOPTING AGENCY:

State Board of Education

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*  
No impact anticipated.

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*  
No impact anticipated.

5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*  
No impact anticipated.

6. RECREATION: *EXPLAIN HOW THE RULE IMPACTS RECREATION IN THE STATE:*  
No impact anticipated.

7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*

No impact anticipated.

8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*

No impact anticipated.

9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

Because the proposed amendments to the rule involve requirements for an independent school to become approved and receive public tuition, and because these requirements are either existing, or are related to content and conduct in learning environments, no potential impact to the physical environment was identified. Therefore, the Board did not conduct a specific analysis for potential environmental impacts.

## Public Input Maximization Plan

### **Instructions:**

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

This form must accompany each filing made during the rulemaking process:

1. TITLE OF RULE FILING:

**Independent School Program Approval Rules**

2. ADOPTING AGENCY:

State Board of Education

3. PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE, LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

The Board's EQS Committee (comprised of co-chairs Kim Gleason and Tammy Kolbe, members Tom Lovett, and former members Patrick Brown and Gabrielle Lucci) was charged with intaking recommendations received from the Act 1 Working Group and considering other changes to the EQS rules for the purpose of policy coherence and alignment. The Committee's considerations for potential revisions to the EQS were framed and constrained by existing statute, particularly Act 1 of 2019, 16 V.S.A. 165, and 16 V.S.A. 164(9).

The EQS Committee carefully reviewed existing statutory requirements, the Act 1 Working Group's recommendations, technical recommendations proposed by the AOE, and recommendations from the field to draft revisions to the EQS that are implementable.

The EQS Committee work began with a review of those sections of the rule series that received the most substantial recommended changes from the Act 1 Working Group.



## Public Input

- Rule Series 2000 Section 2114 Definitions reflected recommendation for revision to existing erms and the addition of definitions for several new terms. Recognizing that a common understanding of the terms within the document is foundational to the ability to carry out the directived of the EQS (2000) rule series, the Committee took testimony throughout the summer of 2022 from many stakeholders, including those represeinting the Jewish Communities of Vermont. This stakeholder testimony informed the Committee revisions to the Section 2114 Definition,

- Rule Series 2000 Section 2120.1 Instructional strategies and Section 2120.5 Curriculum Content.

The next several meetings invited testimony from practitioners to the field. The Committee asked the presenters to reflect on the recommended revisions and consider the following questions:

1. Are the rules clear as written?
2. Do they strike an appropriate balance between offering enough detail to be inderstood, and enough flexibility to ensure application in a local context?
3. Are these rules able to be operationalized in our schools?

The Committee invited practitioners from the field to testify and provide input on these questions. Universally, the Committee heard that the proposed changes are clear, strike an appropriate balance, and can be operationalized in our schools. Without exception, the representatives from the field that came before us welcomed these revisions to align with the values of their school districts and the needs of their students.

The Committee held a public listening session on November 30, 2022, and heard from more than 30 participants. All were in suport of the recommended changes to the EQS.

Additionally, the Committee heard from and considered recommendations from the Vermont School Boards Association, Vermont Superintendents Association,

## Public Input

Vermont Principals Association, Vermont-National Education Association, Vermont Curriculum Leaders Association, Vermont Special Education Advisory Panel, Vermont Student Anti-Racism Network, and the Vermont Independent Schools Association (VISA).

All organizations expressed support for the values of the equitable, anti-racist, culturally responsive, anti-discriminatory and inclusive educational opportunities for Vermont students, as articulated in the proposed revisions to EQS (2000 Series). VISA supported the substance of the rule, but did not support extending application of the entire rule series to independent schools.

On April 10, 2023, the EQS Committee ratified the proposed updates to the rule series by a unanimous vote. The Committee agreed that the issue of whether to apply the EQS rule series to independent schools or whether instead to develop an alternative regulatory framework that would extend Act 1's principles and goals to approved independent schools was an issue to be discussed and resolved by the full State Board.

Subsequently, the State Board held two special meetings (April 13 and May 11, 2023 for a total of four hours) to review, consider, and provide feedback to the proposed amendments to the EQS. The Board acknowledged that its authority to promulgate the EQS rules stemmed from 16 V.S.A. §165, which only applies to independent schools that elect to abide by it. Therefore, the Board identified Rule Series 2200, which is authorized by 16 V.S.A. §164(14), as the proper mechanism to apply the principles of Act 1 to approved independent schools.

On July 24, 2023 the Rule 2200 Subcommittee of the State Board met to begin advising this rule series. The Committee members include Jennifer Samuelson, Tom Lovett, and Kimberly Gleason. The Committee incorporated language from the following sections of the EQS (2000) Rule Series directly into amendments to this rule series: Sections 2110, 2113, 2114, 2120.1, 2120.5, and 2122.1. These sections were developed as a

## Public Input

result of the EQS public engagement process described in the paragraphs above. Since this language had been extensively vetted by stakeholders, the 2200 Committee relied on this prior work and brought this language over to the 2200 Rule Series with no substantive changes.

The Committee met on July 24, July 27, August 4, August 9, and August 16 and took public comment at each meeting before further discussion and revision to the rules. The Committee heard directly from two accrediting agencies regarding proposed revisions to the process set forth in Section 2227 by which accrediting organizations will be recognized by the Board. The Board received comment via email from one accrediting agency membership organization.

The full Board met on August 9 and August 18 where it took comment, discussed, and subsequently revised and approved the rules attached to this submission. The Board received a written comment from Rep. Stone, on behalf of Reps. Arsenault, Graning, Sibilia, Burrows, Buss, Holcombe, Christie; Jay Nichols; Sen. Champion; Rep. Pajala. The Board received oral comment from Rep. Bongartz; Amanda Garces; Ranney Hudson; and Jay Greene. The Board also received written comment from the Education Equity Alliance (comprised of leaders of the VT-NEA, VT Superintendents Association, VT School Boards Association, and VT Principals Association) and the Heads of School from Burr and Burton Academy, St. Johnsbury Academy, Long Trail School, and Lyndon Institute.

The Board will host three virtual hearings at different times during the day and week to accommodate commenters' schedules. The Board has been made aware that there is a particular interest in ensuring that non-English speaking individuals who wish to comment on the rules are able to. The Board will accept comment in languages other than English, will permit an extension to the length of any hearing to account for any time needed for translation during the hearing, and will provide reasonable accommodations for any individual in need of one and so requesting. If the accommodation is to allow for participation in a hearing, two days

## Public Input

advanced notice is appreciated. Individuals or their designees may reach out to either of the two individuals listed as contacts for this Rule Series.

### **4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:**

Please see response to Question 3. Additionally, intentional outreach will be conducted to solicit feedback from accrediting agencies, approved independent schools and approved independent schools ineligible to receive public tuition, the Vermont Independent School Association, membership organizations and leaders who participated in the Act 1 Working Group recommendations, as well as local school boards and local education agencies that do not operate a school as part of their provision of education to resident students.

# Vermont State Board of Education

## Manual of Rules and Practices

### Series 2200 – Independent School Program Approval

CVR 22 000 004

Proposed Amendments (August 23, 2023)

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## **Rule 2200 Independent School Program Approval**

### **Section 2220. Statement of Purpose**

The purpose of independent school approval rules is to assure effective, available, and equitable, educational opportunities that are anti-racist, culturally responsive, anti-discriminatory, and inclusive for students enrolled in Vermont's approved independent schools in accordance with State and federal law and aligned with the purposes set forth in Act 173 of 2018 and Act 1 of 2019.

These rules are organized to provide clarity to independent schools regarding requirements for initial and continued approval to operate and, and if applicable, to receive public funds. Ongoing compliance with state and federal laws and regulations is expected through annual compliance assurances. Accrediting agencies that meet criteria indicating high quality, experience, and alignment with Vermont's educational values will be recognized and the schools they accredit will enjoy an accelerated approval process.

The Board believes that any distinction, exclusion, classification, restriction or preference based on any ground, such as race, ethnicity, skin color, sex, sexual orientation, gender identification, language, religion, political or other opinion, disability, national, social or geographic origin, citizenship or immigration status, income or property, birth or other status, which has the purpose or effect of denying or impairing the recognition, enjoyment, or exercise of fundamental rights and freedoms in the political, economic, social, cultural, civil or any other field should be carefully considered and rejected if it results in unlawful discrimination or interferes with the delivery of effective, available, and equitable educational opportunities. The Board recognizes that discrimination is practiced by individuals and groups, and it is expressed systemically through the structures, laws, practices, and policies of public and private institutions, employers, and organizations.

In addition to the non-discriminatory protections in Subsection 2223.2 (Nondiscrimination Requirements for Approved Schools), discrimination against any student pursuing an education or participating in the general life or activities of a school as a result of or based upon, ethnicity, caste, language and linguistic diversity, socio-economic status, religion, housing status, and non-citizenship or immigration status, does not embody the intent of the Board to promote welcoming, inclusive, bias-free environments for learning in Vermont's schools.

These rules further require all schools to strive for a culturally responsive pedagogy that critically examines and imparts a comprehensive historical and socially conscious understanding of:

- (a) the causes and effects of bias and discrimination as a result of, or based upon, the reasons set forth in Subsection 2223.2 of this Manual and in this Statement of Purpose;
- (b) why all persons should have equitable access to social and economic opportunity;
- (c) why persons and institutions must identify and prevent individual, group, and systemic racism, discrimination, and other forms of unfair treatment; and

(d) the positive and multi-faceted contributions of different social, cultural, racial, linguistic ethnic and indigenous groups to the historical and ongoing project of building and strengthening democracy in the United States and globally.

Nothing herein shall be construed to entitle any student to educational programs or services identical to those received by other students in the same or different schools. These rules are in addition to and, unless otherwise specifically stated, do not supersede other rules adopted by the Agency of Education or contained in the Vermont State Board of Education Manual of Rules and Practice. Nothing herein shall create a private right of action.

### **Section 2221. Statutory Authority**

16 V.S.A. §§ 164(14), 166, 2958(e), 2959 and 2973; 2019 Act No. 1

### **Section 2222. Definitions**

“Agency” means the Vermont Agency of Education.

“Anti-discrimination” means actions, behaviors, programs and policies by school staff, students, school directors, contractors, and community members involved in the daily operations of schools that are necessary to counter discrimination as defined in this Manual, and that promote a fair, just and equitable learning environment for all students.

“Anti-racist” means actions, behaviors, programs, and policies designed and/or implemented by school staff, students, school directors, contractors, and community members involved in the daily operations of schools that are necessary to counter racism as defined in this Manual and that promote a racially inclusive learning environment for all students.

“Approved Independent School” or means an independent school that meets the requirements in Sections 2223 and 2224, as well as the requirements in Section 2229 (Approval to Receive Public Tuition; Special Education Approval).

“Approved Independent School Ineligible to Receive Public Funds” means an independent school that meets the requirements in Sections 2223 and 2224 but does not meet the requirements of rules concerning the delivery of special education services in Section 2229.

“Approved School” means any approved independent school that meets the requirements of Sections 2223 and 2224 of these rules.

“Board” or “State Board” or “SBE” means the Vermont State Board of Education.

“Caste” refers to a hierarchical social system of exclusion and dehumanization based on invented notions of purity and contamination. Those who suffer the stigma of caste are often deprived of or severely restricted in the enjoyment of their civil, political, economic, social, and cultural rights.

“Civic and Community Engagement” means individual and/or collective actions that identify and address issues of public importance, and that provide people with opportunities that contribute to the current and future development of their communities and a democratic society. Civic and community engagement can take place in a variety of formal and informal settings, including, but not limited to, those in governance and electoral politics, educational, cultural, and recreational activities, community service and social justice movements.

“Critical thinking” is the objective examination of an issue to discern or form a judgment based on evaluating evidence, checking assumptions, and adopting multiple perspectives to better understand the question at hand.

“Culturally and Linguistically Diverse Students” are those who are members of home, cultural and social environments whose experience and success is enhanced by schools demonstrating respect for a multitude of linguistic competencies and fostering systems of academic and social inclusion that acknowledge the fundamental importance of such competencies. Linguistic competencies are cultural and linguistic resources that students, families and communities draw upon, including, but not limited to, a variety of languages, including Indigenous languages, multiple-sign languages, and African American Vernacular English and other dialects.

“Culturally responsive teaching” is an evidence-based approach that incorporates knowledge of diverse cultures, languages, and perspectives into learning activities and curriculum design, including connecting students' life experiences and ways of learning, that helps students to both access rigorous curriculum and to develop higher-order thinking skills.

“Culture” means a set of distinctive spiritual, material, religious, intellectual, creative, and emotional attributes of a society or social group, and encompasses, in addition to art and literature, lifestyles, ways of living together, values, traditions, and beliefs.

“Discrimination” is intended to describe any exclusion, restriction, or preference based on any protected class consistent with state and federal law that has the purpose or effect of denying or impairing the recognition, enjoyment or exercise of an individual's fundamental rights. Discrimination is practiced by individuals and groups, and it is expressed systemically through the structures, laws, practices, and policies of public and private institutions, employers, and organizations.

“Ethnic Group” means a group whose members identify with each other based on certain criteria, including a common history, ancestry or culture, religion, nationality, social or geographic origin, skin color, language, and experiences of discrimination and social exclusion, persecution, or other inhuman treatment.

“Ethnic Studies” means interdisciplinary, age appropriate and grade-appropriate curricula and programs dedicated to the historical and contemporary study of race, ethnicity, and indigenous peoples (including the Indigenous People of Vermont). This requires a critical examination of the experiences and perspectives of racial and ethnic groups and indigenous peoples that have suffered systemic oppression, marginalization, discrimination, persecution, and genocide within and outside the United States. “Ethnic Studies” may involve a critical examination of these experiences and perspectives through the lens of the characteristics of social identity groups.

“Ethnicity” means a concept that embodies a wide range of criteria used to identify ethnic groups, such as a common history, ancestry or culture, national, social or geographic origin, skin color, languages, religions, tribe or indigenous people (including the Indigenous Peoples of Vermont), or various combinations of these characteristics.

“Inclusive” or “Inclusion” means school-based curricula, programs, activities, resources, and policies that ensure that academic learning, co-curricular and social offerings, and all other aspects of school life are based on the values of equality, equity, social and cultural diversity, freedom and dignity, so that all students are valued as unique individuals and can achieve their full academic and social potential.

“Individualized Education Program (IEP)” means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Section 2363.

“Intercultural Competency” describes practices and actions to pursue deep understanding, mutual respect, and willingness to learn about the cultures of all people, especially those who have been marginalized, silenced, and/or undervalued.

“Interdisciplinary” means examining and teaching a subject from multiple academic perspectives and encouraging students to engage with and to synthesize diverse perspectives and narratives, including those from their lived experiences, into a coherent understanding or analysis.

“Language” means systems of conventional and unconventional spoken, visual-manual, technological, and written symbols, which human beings use personally and as members of social and cultural groups to express themselves; shape identity; acquire knowledge, mediate power, play, create, and imagine; build and sustain familial, social, and cultural bonds; and express a wide range of personal needs, aspirations, and emotions.

“Linguistic diversity” means the immense body of diverse and complex systems of communication and expression (e.g., official languages, endangered languages, indigenous and minoritized languages, dialects, and non-verbal languages and communication), the respect for and preservation of which is fundamental to students’ experience and academic success; eradicating bias, racism, and discrimination; and fostering practices and systems of inclusion, equality, equity, and diversity in our schools and communities.

“Local Education Agency (LEA)” as that term is defined in 20 U.S.C. § 7801(26), means the supervisory union or supervisory district.

“Neurodiversity” refers to the natural and important variation in how human minds think and is not to be cured or corrected to fit social norms. These differences can include autism, attention deficit hyperactivity disorder, dyspraxia, dyslexia, dyscalculia, and Tourette Syndrome.

“Race” means any invented or socially constructed concept that is used to categorize groups and cultures on the basis of physical differences transmitted through descent, like skin color.

“Racism” means the theory, belief, or act of making value judgements that are based on racial, ethnic, or cultural differences, or which advances the claim that racial, ethnic, or cultural groups are inherently superior or

inferior, thus explicitly arguing or implying that some groups are entitled to dominate, exploit, exclude, or eliminate others presumed to be inferior. Racism is practiced by individuals and groups, and it is expressed systematically through the structures, laws, regulations, practices and policies of public and private institutions, employers, and organizations.

“Recognized Independent School” means an independent school meeting the requirements in 16 V.S.A. § 166(c). A recognized independent school is not eligible to receive public tuition.

“Restorative Practices” refer to the whole-school, relational approaches to building school climate and addressing student behavior that fosters belonging over exclusion, social engagement over control, and meaningful accountability over punishment. It encourages members of the school community to be constantly present, attending to needs as they arise. It exercises their ability to be dynamic rather than static in their responses. Restorative approaches also begin with proactive structures to build positive relationships and communication and create a space for people to express themselves—their strengths, assets, responsibilities, and also their vulnerability.

“Secretary” means the Secretary of the Vermont Agency of Education or their designee

“Social Identity Group” means a group of people who share common characteristics that shape their identity and promote a sense of unity, including sex, sexual orientation, gender identification, disability, class, socio-economic status, or other characteristics that are fundamental to identity.

“Special Education Fees” means funds paid by a school district or supervisory union to an approved independent school for special education services beyond those covered by general education tuition, as defined in 16 V.S.A. § 2973(b)(2)(B).

“Special Education Services” means specially designated instruction at no cost to the parent, to meet the unique needs of an eligible student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions and in other settings; and instruction in physical education.

“Specially designed instruction” means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student's disability and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the State that apply to all children. This definition is intended to be consistent with the term "Special Education Services" as used in Subsection 2360.2.12.

“Student who requires additional support” means a student who meets the criteria defined in 16 V.S.A. § 2942(8).

“Therapeutic Approved Independent School” or “Therapeutic Independent School” or “Therapeutic School” means an approved independent school that limits enrollment to students who are on an IEP or plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. and who are enrolled pursuant to a written agreement between an LEA and the school. These schools are eligible to receive public tuition, which is inclusive of both general and special education services and is at a rate approved by the Agency of Education.

“Tuition” means funds paid by a school district to an approved independent school for general education in accordance with Section 2228.

**Section 2223. Requirements to Operate as an Approved Independent School or an Approved Independent School Ineligible to Receive Public Funds**

Every person or entity desiring to operate an elementary or secondary school as either an approved independent school or an approved independent school ineligible to receive public funds shall apply in writing to the Secretary and meet the requirements of law and these rules. Approved schools shall be permitted to operate for a term of five years or less, as set by the Board, and may submit a new application for approval (reapproval) prior to the expiration of each term. The Board may revoke, suspend, or impose conditions upon an approved school according to process set forth in these rules.

**2223.1. General Requirements for Approved Schools**

All approved schools must comply with statutory requirements and the Board’s rules for approved schools and must provide a minimum course of study pursuant to 16 V.S.A. §906. An approved school must have the resources required to meet its stated objectives, including financial capacity, faculty who are qualified by training and experience in the areas in which they are assigned, and physical facilities and special services that are in accordance with state and federal law or regulation.

**2223.2. Nondiscrimination Requirements for Approved Schools**

No student in an approved school shall be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity as the result of, or based upon, the student's race, gender, color, creed, national origin, marital status, sexual orientation, gender identity, or disability, or any other reason set forth in state or federal non-discrimination requirements.

**2223.2.1. Nondiscrimination Statement and Policy**

Each approved school shall maintain a statement of nondiscrimination that is consistent with the Vermont Public Accommodations Act, Title 9 Vermont Statutes Annotated, Chapter 139 and the Vermont Fair Employment Practices Act, Title 21 Vermont Statutes Annotated, Chapter 5, Subchapter 6. The statement shall be displayed on its website and included in the school’s application materials. The school shall abide by its nondiscrimination policies in all aspects of the school’s recruitment, enrollment, operation, and employment activities.

- (a) The Agency shall develop a standardized method to assess a school’s compliance with this subsection that shall be used to investigate complaints of non-compliance and by the Agency when evaluating applications for approval by accredited and non-accredited schools. The method shall provide indicators of compliance and shall be made available to schools for their ongoing self-assessment.

**2223.3. Specific Requirements for Approved Schools**

Each approved school shall maintain a safe, accessible, orderly, civil, flexible, and positive learning environment, free from hazing, harassment, and bullying. Educational opportunities shall be provided in an equitable, anti-racist, culturally responsive, anti-discriminatory, and inclusive manner, based on sound instructional and

classroom management practices and clear discipline and attendance policies that are consistently and effectively enforced.

**2223.3.1. Physical Facilities**

Each approved school must ensure that its physical facilities, including plant, materials, and equipment, meet all applicable state and federal requirements pertaining to the health, safety, and privacy of students.

(a) Each residential school must arrange, on an annual basis, a fire safety inspection performed by the Department of Public Safety or its designee. A certificate executed by the inspecting entity, declaring satisfactory completion of the inspection, and identifying the date by which a new inspection must occur, shall be posted at the school in a public location. The school shall provide a copy of the certificate to the Secretary of Education after each annual inspection. The school shall pay the actual cost of the inspection unless waived or reduced by the inspecting entity.

(b) Each school must have classroom, laboratory, library, and other facilities necessary to operate its program.

**2223.3.2. Financial Capacity, Solvency, and Stability**

An approved school must maintain the financial capacity to meet its stated objective during the period of its approved status and must adhere to all required financial reporting requirements. For purposes of these rules, "financial capacity" means that anticipated revenue and funds on hand are sufficient to meet a school's stated objectives.

(a) Each approved school must file federal or state tax returns when due, unless an extension is granted; meet payroll and state payroll tax obligations as they are due; maintain required retirement contributions; ensure that designated funds are not used for nondesignated purposes; fully comply with the financial terms of its secured installment debt obligations; and not become insolvent as defined by 9 V.S.A. §2286(a).

(b) An approved school shall report to the Secretary within five days after its knowledge of any of the following events, unless the failure is de minimus:

1. the school's failure to file its federal or State tax returns when due, taking into account permissible extensions of time;
2. the school's failure to meet its payroll obligations as they are due or pay federal or State payroll tax obligations when due;
3. the school's failure to maintain required retirement contributions;
4. the school's use of designated funds for nondesignated purposes;

5. the school's inability to fully comply with the financial terms of its secured installment debt obligations over a period of two consecutive months, including the school's failure to make interest or principal payments as they are due or to maintain any required financial ratios;
6. the withdrawal or conditioning of the school's accreditation on financial grounds by a private, State or regional agency recognized by the Board for accrediting purposes; or
7. the school's insolvency as defined in 9 V.S.A. § 2286(a).

### **2223.3.3. Instruction, Faculty, and Special Services**

To demonstrate that it provides a minimum course of study as defined by 16 V.S.A. §906, an approved school must maintain a written description of its curriculum, methods of instruction, evaluation procedures, and the special services that it has designed to achieve its educational objectives, to demonstrate that it provides a minimum course of study as defined by 16 V.S.A. §906.

#### **(a) Professional Staff.**

1. The school must employ a sufficient number of professional staff for the population served who are qualified by training and experience in the areas in which they are assigned as measured by the following:
  - A. for teachers, a minimum of a bachelor's degree in their field of instruction or substantially equivalent time in training and experience in their field of instruction; and
  - B. for all professional staff, relevant experience and/or training in other programs not related to teaching or administrative duties to which they are assigned.
2. The school must have an adequate program of continuing professional staff development. The school shall keep a general description of its staff meetings, expectations for professional growth of staff, and information describing the school's inservice training, financial, and other support given to staff for professional development.
3. Job descriptions for every position that describe training, experience, and degrees required for the position shall be maintained. The school shall also maintain a file with a resume, vita, or description of appropriate qualification for each current staff member, along with their current assignment, length of service, and description of duties not related to teaching or administration.

#### **(b) Instructional Strategies. Educators shall be supported in:**

1. examining their own identities and biases and fostering a learning environment that recognizes multiple ethnic, cultural and racial perspectives; presents and critiques historical counter-narratives; and encourages students to examine issues and expressions of social equity within and beyond the classroom or school;



2. modeling and setting high expectations for all students - regardless of a student's prior academic experience, family background, socio-economic status or (dis)abilities and promoting respect for student differences;
3. recognizing the essential role that language acquisition and literacy play in the lives of students, especially culturally and linguistically diverse students, not only in respect to listening, speaking, reading, and/or writing, but as home and community practices that shape a culturally responsive understanding of students' social, racial, linguistic, and ethnic identities, of their communities, and of their world;
4. communicating in culturally and linguistically responsive ways;
5. providing learning experiences that are designed for neurodiversity with multiple ways for students to access learning;
6. using educational and assistive technology to reduce barriers to learning and heighten student engagement;
7. cultivating student agency by providing multiple ways for students to engage with and demonstrate their new learning;
8. emphasizing an inquiry-driven approach to all units of study and bringing real-world issues into the classroom;
9. heightening the relevance and importance of learning objectives and providing mastery-oriented feedback;
10. employing the use of data to adapt pedagogy to unique student needs and incorporate student feedback into instructional design and curricula;
11. teaching students how to develop metacognitive and social emotional skills that improve their academic outcomes;
12. designing learning experiences that improve students' wellbeing, including opportunities for physical movement in the classroom; and
13. fostering a positive classroom culture using restorative practices where appropriate.

(c) Curriculum Content. Curriculum shall be equitable, anti-racist, culturally responsive, anti-discriminatory, inclusive and accessible to families and community members.

1. All approved schools shall enable students to engage annually in rigorous, relevant, and comprehensive learning opportunities that are socially and culturally responsive and allow them to demonstrate proficiency in ethnic and social equity studies.

2. The course of study offered shall be adequate to meet the educational purposes of the school and to provide a minimum course of study that is age and ability appropriate.

(d) Special Services. Schools shall maintain special services necessary to meet the requirements of a minimum course of study and its educational purposes, including library services, administrative services, guidance and counseling services, and a system of records by which student progress may be assessed.

#### **2223.3.4. Maintaining Safe and Equitable Access to Educational Opportunities**

Approved schools are expected to provide for the safety, protection, and equitable treatment of students and school personnel in accordance with state and federal laws. School governance boards and leadership teams shall make every effort to remain current in understanding and implementing recognized best practices and procedures in this regard and shall also take care to remain compliant with laws adopted after the promulgation of these rules. At a minimum, each approved school shall develop and maintain the following:

(a) a comprehensive plan for responding to student misbehavior, as required by 16 V.S.A. §1161(a), that it is clear and consistently enforced to address student behavior, language, classroom attendance, clothing, and treatment of property, as well as consequences for violations of policy;

(b) harassment, hazing, and bullying prevention policies pursuant to 16 V.S.A. §166(e) and procedures for dealing with harassment, hazing, and bullying of students pursuant to chapter 9 subchapter 5 of Title 16 of the Vermont Statutes Annotated;

(c) practices that comply with the requirements of 16 V.S.A. §253 - §255 relating to confidentiality and maintenance of records, criminal record checks, and checks of the Child Protection Registry and the Vulnerable Adult Abuse, Neglect, and Exploitation Registry;

(d) procedures that do not permit any person listed on the State of Vermont, Department of Public Safety, Vermont Crime Information Center Sex Offender Registry to work at the school as an employee, volunteer, or work study student pursuant to 16 V.S.A §260;

(e) practices that ensure that adults employed in the school receive orientation, information, or instruction on the prevention, identification, and reporting of child sexual abuse, as defined in 33 V.S.A. §4912(8), and sexual violence and opportunities for parents, guardians, and other interested persons to receive the same information as required by 16 V.S.A. §563(a);

(f) opportunities that provide access for eligible students to participate in dual enrollment, accept credit awarded, collect enrollment data, and provide support to students in accessing the opportunity and otherwise transitioning to postsecondary enrollment pursuant to 16 V.S.A. §944;

- (g) a procedure for providing the names and addresses of publicly funded students enrolled at the approved school to the school's regional career technical education (CTE) center;
- (h) An enrollment policy designed to serve children with disabilities;
- (i) a concussion management action plan and information that is developed, distributed, and acknowledged by required personnel and appropriate training for athletic coaches in the recognizing and managing the risks of concussions and other head injuries in accordance with 16 V.S.A. §1431;
- (j) comply with requirements of 18 V.S.A. §1120 et seq., regarding the immunization of students against disease;
- (k) maintain a policy pursuant to 16 V.S.A. §912 regarding a student's right to be excused from participating in any lesson, exercise, or assessment requiring the student to participate in or observe the dissection or harm of an animal;
- (l) provide students access to menstrual products at no cost pursuant to 16 V.S.A. §1432;
- (m) comply with supporting and protecting the rights of married, pregnant, or parenting students pursuant to 16 V.S.A. §1073;
- (n) permit students with life-threatening allergies or with asthma to possess and self-administer emergency medication in accordance with 16 V.S.A. §1387;
- (o) an all-hazards emergency operations plan consistent with 16 V.S.A. §1480;
- (p) fire and emergency preparedness drills pursuant to 16 V.S.A. §1481;
- (q) a written building access control and visitor management policy consistent with 16 V.S.A. §1484;
- (r) practices that promote an equitable, just, and inclusive community of adults and students, foster a culture of learning, and inspire students to respect and value diversity in its many forms;
- (s) after July 1, 2025, behavioral threat assessment policies, procedures and reporting mechanisms consistent with 16 V.S.A. §1485; and
- (t) practices to remain aware of and compliant with any rule or regulation related to the safety, protection, and equitable treatment of students and school personnel.

### **2223.3.5 Other Required Activities**

In addition to activities outlined in Subsection 2223.3.4 (Maintaining Safe and Equitable Access to Educational Opportunities), each approved school shall:

- (a) provide to the parent or guardian responsible for each of its students, prior to accepting any money for a student, an accurate statement in writing of its status under 16 V.S.A. §166(b). Failure to comply with this provision may create a permissible inference of false advertising in violation of 13 V.S.A. §2005;
- (b) maintain a register of the daily attendance of each of its enrolled students;
- (c) provide to the Secretary on October 1 of each year the names, genders, dates of birth, and addresses of its enrolled students. Within seven days of the termination of a student's enrollment, the approved school shall notify the Secretary of the name and address of the student. The Secretary shall notify the appropriate school officials as provided in 16 V.S.A. §1126;
- (d) maintain an operating schedule that includes a total number of instructional hours each year that is not less than that required of a public school serving the same grades;
- (e) comply with legal requirements concerning nondiscriminatory school branding;
- (f) measure attainment of standards for student performance for publicly funded students, as required under 16 V.S.A. 164(9), and provide data related to the assessments to the Secretary as required by 16 V.S.A. §166(g); schools are encouraged to provide the data to local education agencies;
- (g) provide information to sending school districts related to reporting on weighting categories, as requested, pursuant to 16 V.S.A. §4010(c);
- (h) comply with 16 V.S.A. §12 requiring select school officials to subscribe to an oath or affirmation to support the U.S. Constitution, Vermont Constitution, and all state and federal laws;
- (i) conduct exercises in commemoration of the birth, life, and services of Abraham Lincoln, pursuant to 16 V.S.A. §907;
- (j) policies related to record maintenance and retention that, at minimum, provide for the timely and confidential disposition of student records in the event of the school's closure; and
- (k) comply with other applicable state and federal requirements pertaining to approved schools.

#### **2223.3.6. Independent Schools Operating a Boarding Program**

To be approved under these rules, an independent school that operates a boarding program, enrolls students as boarding students, or operates a residential treatment program shall be accredited by a state or regional agency recognized by the Board for accrediting purposes or shall be licensed as a residential childcare facility by the Department for Children and Families. This requirement does not apply to an independent school that enrolls only day students.

#### **2223.4. Annual Compliance Assurance**

- (a) Each approved school shall attest to continued compliance with applicable requirements of this rule and federal and state law on or before January 15<sup>th</sup> of each year.

(b) In consultation with the Board, the Agency shall prepare and make available a simplified form to be used to meet the requirement of this section, that shall be made available to schools at least 90 days from the date it is due. The form shall include the school's attestation, and necessary supporting evidence, that it meets the requirements of Subsection 2223.2 (Nondiscrimination Requirements for Approved Schools) using the self-assessment tool indicated in that subsection, and an assurance of compliance with Subsection 2229.1 – 2229.5 (( Enrollment: Requirements for Approved Independent School, Students, and LEAs),(Staffing), (Assurances), (Procedure for Ensuring the Provision of Special Education Services to Publicly Funded Students in Approved Independent Schools), (Out-of-State Programs)), if applicable. Incomplete or modified forms will not be accepted as meeting the requirement set forth in subsection (a) above. Schools may request and the Secretary may grant an extension of up to 45 days to submit the annual compliance assurance form for good cause shown, if the request is submitted 14 or more days before the due date.

(c) If a school fails to submit an acceptable annual compliance assurance form by the date set by the Agency, the school will be considered out of compliance with subsection (a) above. The Secretary shall immediately notify the school of its noncompliance and the school shall have five days to come into compliance. If the school fails to submit an acceptable compliance assurance form to the Agency within five days of notification by the Secretary, the Secretary shall launch an investigation pursuant to Subsection 2226.2.2 (Investigations; Due Process Hearings), which shall be promptly followed by a due process hearing set forth in (e) of the same Subsection. If, after a hearing, the Board determines that the school intentionally violated this subsection pursuant to 2226.3(a) (Revocation or Suspension of Approval), it shall decide whether to revoke, suspend, or impose conditions on the school's approval status.

#### **2223.5. Confidential Information**

Information provided by a school under these rules that is not already in the public domain is exempt from public inspection and copying under the Public Records Act and shall be kept confidential according to 16 V.S.A. § 166(b)(8).

#### **Section 2224. Application and Reapplication for Approval; Approval Process**

Approval shall be recommended for an independent school offering elementary or secondary education that provides a minimum course of study pursuant to 16 V.S.A. § 906 and that substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools. A school meeting the requirements of Section 2223 (Requirements to Operate as an Approved Independent School or an Approved Independent School Ineligible to Receive Public Funds) and this Section, but not Section 2229 (Approval to Receive Public Tuition; Special Education Approval), may be recommended for approval but may not receive public tuition.

#### **2224.1. Standard Application Process**

All independent schools that are not accredited by a recognized accrediting agency pursuant to Section 2227 (Recognized Accrediting Agencies) shall follow the standard application process set forth below.

#### **2224.1.1. Standard Application**

An independent school seeking approval under these rules shall apply to the Secretary using a form prepared by the Secretary to meet the requirements of this section. At a minimum, the application shall solicit the information containing or describing the school's basic information, mission statement, enrollment policy, curriculum, methods of instruction, evaluation procedures, special services provided, governance information, evidence of compliance with local, state, and federal laws and regulations, staffing and instructional strategies, fiscal practices and evidence of financial capacity, operational information, appropriate assurances or disclosures, a request to receive public funds, if applicable, and any other information that the Secretary, Board, or review committee may deem important in considering whether the school meets requirements for approval. The school shall also submit a complete, unmodified annual assurance attestation form described in Subsection 2223.4 (Annual Compliance Assurance).

#### **2224.1.2. Standard Application Review, Visit, Report, and Recommendation**

Upon receipt of a complete application, the Secretary shall appoint a review committee of at least two persons. The review committee shall review the application materials and visit the school. To the extent possible, the visit shall be coordinated by the Secretary with other agencies of state government that inspect such facilities. The review committee shall examine the application materials and consider findings from its site visit and submit a report, including a written initial recommendation regarding approval, to the Secretary, and a copy sent to the applicant school. The applicant shall be given 30 days to respond before the Secretary makes a final recommendation regarding approval to the Board. The Secretary's final recommendation shall contain the findings of other agencies of state government that inspect such facilities.

#### **2224.2. Accredited Independent School Application Process**

In the case of any independent school seeking approval that has been accredited within the last five years by a recognized accrediting agency pursuant to Section 2227 (Recognized Accrediting Agency), an abbreviated application and review process described in this subsection may be used.

##### **2224.2.1. Accredited Independent School Application**

An independent school seeking approval under this subsection shall apply to the Secretary using a form prepared by the Secretary. The application shall require the school to provide evidence of accreditation from the recognized accrediting agency, basic information about the school, assurances of compliance with state specific requirements set forth in Subsections 2223.3.4 (Maintaining Safe and Equitable Access to Educational Opportunities) and 2223.3.5 (Other Required Activities) or state law, and a request to receive public funds, if applicable. The school shall also submit a complete, unmodified annual assurance attestation form described in Subsection 2223.4 (Annual Compliance Assurance).

##### **2224.2.2. Accredited Independent School Application Review, Report, and Recommendation**

Upon receipt of a complete application, the Secretary shall review the application materials and conduct an independent review of the school's compliance with the nondiscrimination provisions of these rules and applicable law. The Agency shall submit a report including a written initial recommendation regarding approval, to the applicant school. The applicant shall be given 30 days to respond before the Secretary makes a final recommendation regarding approval to the Board. A comprehensive review of programs and operations by a review committee, including a site visit, will not be required.

#### **2224.3. Review**

The Secretary shall confer with the Chair of the Board on a regular basis to ensure effective coordination in the review and approval of applications and reapplications to promote efficiency in scheduling and expediency in decision-making.

#### **2224.4. Board Approval**

The Board shall review each application for approval and consider the recommendation of the Secretary. The Board shall make findings listed in (a), (b), and (c) below, as applicable, prior to approval and may set additional conditions for approval in the exercise of its judgment.

(a) The Board shall make the following findings prior to approval of any school that submitted a standard application:

1. The description of the school in the approval application is accurate;
2. The course of study offered is adequate to meet the educational purposes of the school and to provide a minimum course of study that is age and ability appropriate;
3. The school has available support services necessary to meet the requirements of a minimum course of study and its educational purposes, including library services, administrative services, guidance and counseling services, and a system of records by which student progress may be assessed;
4. The school's description of its enrollment sufficiently state and describe how it is designed to serve children with disabilities.
5. The school has classroom, laboratory, library, and other facilities necessary to operate its program;
6. The school employs professional staff who are qualified by training and experience in the areas in which they are assigned as measured by the following:
  - A. For teachers, a minimum of a bachelor's degree in their field of instruction or substantially equivalent time in training and experience in their field of instruction.
  - B. For all professional staff, relevant experience and/or training in other programs not related to teaching or administrative duties to which they are assigned;
7. The school has an adequate program of continuing professional staff development as demonstrated in the application;
8. The school employs a sufficient number of professional staff for the population served;
9. The school substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools including nondiscrimination in

admissions and operations and requirements relative to its facilities, fire drills, and the immunization of its students against disease;

10. The school maintains a register of the daily attendance of each of its enrolled students;

11. The school maintains an operating schedule that includes a total number of instructional hours each year that is not less than that required of a public school serving the same grades;

12. The school has the financial capacity to carry out its stated objectives for the period of approval evidenced by one of the following:

(A) An audit letter by a certified accounting firm from the present or prior year describing financial capacity;

(B) A notarized letter summarizing the financial status within the present or prior fiscal year signed by the board of directors or governing body;

(C) An audit from the present or prior fiscal year performed by a certified accounting firm; or

(D) A statement of financial capacity of a private, state, or regional agency recognized by the State Board for accrediting purposes concerning the school's financial capacity;

13. The school complies with the requirements of 16 V.S.A. § 255 relating to criminal record checks and checks of the Child Protection Registry and the Vulnerable Adult Abuse, Neglect, and Exploitation Registry;

14. The school complies with legal requirements concerning nondiscriminatory school branding;

15. The school has adopted a policy on record maintenance and retention that, at minimum, provides for the timely and confidential disposition of student records in the event of the school's closure;

16. the school promotes an equitable, just, and inclusive community of adults and students, foster a culture of learning, and inspire students to respect and value diversity in its many forms; and

17. The school has attested to its compliance with Vermont-specific laws and regulations by submitting a complete, unmodified annual attestation form with its application.

(b) The Board shall make the following findings prior to approval of any school that submitted an accredited independent school application:



1. The school is accredited and deemed in good standing by a recognized accrediting agency under Section 2227 (Recognized Accrediting Agencies) within the last five years;
2. The application and materials submitted sufficiently demonstrate that the school provides a minimum course of study pursuant to 16 V.S.A. § 906; and
3. The school has attested to its compliance with Vermont-specific laws and regulations by submitting a complete, unmodified annual attestation form with its application, and the Agency has independently certified compliance with the nondiscrimination provisions of these rules and applicable law.

(c) Prior to approving a school's application to receive public funds pursuant to Subsection 2229.6, the Board shall consider the recommendation of the Secretary and find that the school meets all requirements necessary for approval under these rules and applicable sections of Title 16.

#### **2224.5. Continued Approval**

Approval of a school completing a timely application for further approval shall extend until the Board acts on further approval.

#### **2224.6. Continued Accreditation**

A school accredited by a recognized accrediting agency pursuant to Section 2227 (Recognized Accrediting Agencies) shall notify the Agency within five days of any change to its accreditation status.

#### **2224.7. Reapplication**

The Secretary shall notify each school of the date that its approval status will expire not less than six months prior to its expiration and shall provide the date by which its application for reapproval is due to the Secretary. Schools that wish to remain approved without interruption shall follow the Standard Application Process or Accredited School Application Process as it applies to them. The Secretary may extend the reapplication period for good cause.

#### **2224.8. Interim Compliance Report from Accrediting Agency**

For any school accredited by a recognized accredited agency under Section 2227 (Recognized Accrediting Agencies) seeking reapplication under 2224.7 (Reapplication) whose accreditation period exceeds five years, a supplemental interim report from the accrediting agency must be submitted during the last year of the school's five-year approval by the Board and must provide information necessary to assure the Board that the school meets the approval standards. If such proof of compliance with approval standards cannot be shown, then the school must undergo the application process described in Subsection 2224.1.1 (Standard Application) in seeking continued approval.

#### **Section 2225. Length of Approval**

The Board may grant initial approval for not more than two years, and renewal of approval for not more than five years.

#### **Section 2226. Termination; Procedures for Revoking or Suspending Approval**

### **2226.1. Termination**

Approval of an independent school that fails to complete a timely application for reapproval shall terminate on the date specified in the most recent approval action, provided that the school received notification of the expiration of the approval period required in Section 2224.7 (Reapplication).

### **2226.2. Complaints; Investigations; Due Process Hearings**

#### **2226.2.1. Complaints**

(a) Complaints against an approved school must be made in writing to the Secretary. The complaint must contain enough detail to show that the school substantially failed to comply with the minimum course of study required, failed to maintain resources required to meet its stated objectives, or failed to comply with statutory requirements or the Board's rules for approved schools.

(b) Reports of drug or alcohol use shall be referred to the state's attorney for the county in which the school is located. Reports of child abuse or neglect shall be reported to the Department for Children and Families. Reports concerning the safety of facilities, water supply, electricity, plumbing, or waste disposal systems shall be referred to the appropriate agency.

#### **2226.2.2. Investigations; Due Process Hearing**

(a) The Secretary shall conduct an initial investigation of reports or complaints related to the requirements of this rule and laws that apply to approved schools and in cases of noncompliance with the annual compliance assurance requirement set forth in Subsection 2223.4 (Annual Compliance Assurance). The school shall receive notification of the complaint and investigation unless contraindicated by the particular facts. If, following an initial investigation, the Secretary finds a violation of rules or laws that apply to approved schools, the Secretary should first determine whether the matter can be resolved through informal means, such as by provision of regulatory guidance, and confirm that corrective action is taken by the school.

(b) If the Secretary determines that informal means are not appropriate to the violation or if the matter has not been resolved informally, the Secretary may place the approved school on probation and notify the Board of this action. An approved school may appeal the imposition of probation to the Board by requesting a hearing as provided in Subsection 2226.3 (Revocation or Suspension of Approval).

(c) At any time, the Secretary may conduct a formal investigation without first attempting an informal resolution or imposing probation.

(d) If the Secretary determines that a formal investigation is warranted, the Secretary shall appoint a review team of at least two persons that, with the consent of the school, shall include a member of the Council of Independent Schools. The team shall conduct a school visit and shall obtain from the school such information or documentation necessary to perform its assessment. The review team will inform the Secretary and the school of that results of its visit and assessment. Secretary shall share the findings with the Council of Independent Schools. The Council shall consider the findings from the investigation

and the Secretary's proposed resolution and issue a written opinion that shall include minority opinions, if applicable, on the same.

(e) If, after receiving the Council's opinion, the Secretary determines that revocation or suspension of approval is warranted, the Secretary shall notify the Board of the recommendation and provide notice to the school. The Board shall hold a hearing pursuant to 3 V.S.A. chapter 25 to consider the Secretary's recommendation.

(f) If the Secretary reasonably believes that an approved school lacks the financial capacity to meet its stated objectives during the period of its approved status, including by means of self-report any of the financial events listed in 2223.3.2(b) (Financial Capacity, Solvency, and Stability), the Secretary shall so notify the school in writing and shall provide the school a reasonable opportunity to respond. If the Secretary does not find that the school has satisfactorily responded or demonstrated its financial capacity, a formal investigation may be initiated in accordance with (d) above, pursuant to 16 V.S.A. §166(b)(8).

(g) The Secretary shall maintain a register of all complaints that result in imposition of probation or a formal investigation, which shall be a public record, and which shall include the general nature of the complaint and action taken by the Secretary.

### **2226.3. Revocation or Suspension of Approval**

(a) After providing an opportunity for hearing pursuant to Subsection 2226.2.2 (Investigations; Due Process Hearing) above, the Board may revoke, suspend, or impose conditions on the status of an approved school, including its ability to receive public funds for:

1. failure to demonstrate that the school has the resources required to meet its stated objectives;
2. failure to comply with a statutory requirement or the Board's rules for approved schools, including failure to submit an annual compliance assurance;
3. failure to report any of the financial events listed in 2223.3.2(b) (Financial Capacity, Solvency, and Stability); or
4. failure to make an annual enrollment report to the Secretary as required by 16 V.S.A. § 166(b)(4).

(b) In considering whether an independent school lacks financial capacity to meet its stated objectives during the period of its approved status and what actions to take, the Board may consult with, and draw on the analytical resources of, the Vermont Department of Financial Regulation.

### **Section 2227. Recognized Accrediting Agencies**

(a) The Board shall recognize accrediting agencies that meet the following requirements:

1. operate continuously for at least five years prior to applying for recognition under this section;
2. maintain membership in a peer organization that supports accrediting agencies in continuous improvement and alignment with best practices in school accreditation;
3. use a peer review process that includes evaluation by leaders of similar school;
4. appropriately train all staff and peer reviewers who are involved in the accreditation process;
5. accredit schools based on publicly accessible documented standards, including mission, governance, finance, program, community of the school, administration, development, admissions, personnel, general health and safety, child and student protection and well-being, facilities, student services, school culture, and residential life (where applicable);
6. perform a comprehensive onsite visit of any school seeking accreditation while such school is in session;
7. require that schools seeking accreditation to have curriculum that is informed by research, document individual student progress, and have mechanisms for monitoring, assessing, and providing feedback on student progress;
8. require that schools seeking accreditation promote an equitable, just, and inclusive community of adults and students, foster a culture of learning, and inspire students to respect and value diversity in its many forms;
9. conduct ongoing and periodic reviews as necessary throughout the accreditation cycle of the schools that it accredits and provide interim reports during the accredited school's approval period that are sufficient to meet the informational needs of the Board;
10. demonstrate substantial understanding and familiarity with state laws, policies, and regulations that apply to approved schools in Vermont; and
11. agree to review and share evidence of practices and compliance with state-specific requirements, if requested by the Agency, during the initial or interim stages of an approved school's accreditation period, except that the Agency shall retain the responsibility to review and determine compliance with nondiscrimination provisions of these rules.

(b) The Board shall create a publicly available list of currently recognized accrediting agencies that meet the criteria described in subsection (a) above. Any agency seeking to be recognized by the Board under this section shall submit a letter and supporting evidence to the Board detailing the ways in which it meets each criterion. Each applicant agency shall also provide their methodology for assessing and supporting schools in meeting and advancing diversity, equity, inclusion, and other nondiscriminatory practices. Upon review of each submission, the Board shall determine whether it will recognize the

accrediting agency and set the length of time that such recognition will be in effect. The Board may impose additional conditions upon a recognized accrediting agency as it deems appropriate. Applicant agencies shall be notified of a decision and any conditions of continued recognition in writing. The Board may remove any agency from the list of recognized accrediting agencies at any time, after finding that the agency no longer meets one or more of the criterion listed below.

(c) The Board shall continue to recognize accrediting agencies listed in Rule 7320 until July 1, 2024.

## **Section 2228. Tuition from Public Funds**

### **2228.1. Tuition for Approved Schools in Vermont**

Tuition shall not be paid from public funds to any independent elementary or secondary school in Vermont unless the school satisfies the requirements in Section 2223 (Requirements to Operate an Approved Independent School or Approved Independent School Ineligible to Receive Public Tuition) and Section 2224 (Application and Reapplication for Approval; Approval Process), as well as Section 2229 (Approval to Receive Public Tuition, Special Education Tuition). Notwithstanding this prohibition, tuition may be paid from public funds in cases where:

(a) There is an order from a court or from a due process hearing pursuant to Subsection 2365.1.6 (Due Process Complaint Procedures) requiring such payment; or

(b) The Secretary has approved an exception for a placement in an independent school pursuant to Subsection 2230.1 (Exceptional Circumstances – Approval Process).

### **2228.2. Tuition for Out-of-State Schools**

Tuition to be paid to an independent school located out of state shall be made in accordance with 16 V.S.A. § 828.

## **Section 2229. Approval to Receive Public Tuition; Special Education Approval**

### **2229.1. Enrollment: Requirements for Approved Independent Schools, Students, and LEAs**

(a) Each approved independent school shall publish, maintain, and follow a written enrollment policy which, at minimum, shall provide the following:

1. That the student or the parent of a student seeking to attend the approved independent school shall voluntarily submit an application;
2. Any special considerations or requirements for a student's acceptance for enrollment, none of which shall disadvantage a student based on the student's membership in a protected class, the student's actual or suspected disability, or the student's socioeconomic status;
3. The school's process for making enrollment decisions when the number of applicants exceeds capacity; and

4. That a student shall be accepted for enrollment in a non-discriminatory manner and consistent with the school's written enrollment policy. No student shall be denied acceptance for enrollment if the reason for denial is that the student is disabled as defined in section 504 of the Rehabilitation Act of 1973 as amended or that the student is eligible for special education or undergoing the comprehensive evaluation process for special education. No student shall be denied acceptance for enrollment on the basis of the student's race, gender, color, creed, national origin, marital status, sexual orientation, gender identity or disability, or any other reason set forth in state or federal non-discrimination requirements.

(b) Upon the student's acceptance for enrollment, the student's IEP team shall meet to determine how the student's services shall be provided. The approved independent school and the LEA shall follow the procedures in Subsection 2229.4 (Procedures for Ensuring the Provision of Special Education Services to Publicly Funded Students in Approved Independent Schools), after which the student shall be enrolled in the approved school or, upon the decision of the hearing officer in Subsection 2229.4(f), below, the IEP team shall consider an alternative enrollment for the student.

(c) When a publicly funded student seeks to attend an approved independent school after the start of the school year, upon the student's acceptance for enrollment, the student shall be provisionally enrolled consistent with the procedures in Subsection 2229.4, during which time the LEA of residence shall agree to pay tuition on the student's behalf until the procedures in 2229.4 have been completed and the student is enrolled, or until the hearing officer issues a decision pursuant to Subsection 2229.4(f), below.

(d) This Subsection, 2229.1, shall not apply to a therapeutic independent school.

### **2229.2. Staffing**

An approved independent school is not required to demonstrate that it has the resources to serve every category of special education as defined under Board rules in order to be approved or retain its approval to receive public funding for general tuition. Therapeutic independent schools shall have the capacity to serve the needs of students they are designed to serve. The Secretary shall establish minimum standards of services for students receiving special education services in independent schools in Vermont.

### **2229.3. Assurances**

The approved independent school shall demonstrate that it has the ability to serve all students with disabilities by:

(a) Demonstrating an understanding of special education requirements, including:

1. Provision of a free and appropriate public education in accordance with federal and state law,
2. Provision of education in the least restrictive environment in accordance with federal and state law,

3. Characteristics and educational needs associated with any of the categories of disability or suspected disability under federal and state law, and

4. Procedural safeguards and parental rights, including discipline procedures, specified in federal and state law;

(b) Committing to implementing the IEP of an enrolled student with special education needs, providing the required services, and appropriately documenting the services and the student's progress;

(c) Employing or contracting with staff who have the required licensure to provide special education services;

(d) Agreeing to communicate with the responsible LEA concerning:

1. Development of, and any changes to, the IEP,

2. Services provided under the IEP and recommendations for a change in the services provided,

3. The student's progress,

4. Maintenance of the student's enrollment in the independent school, and

5. Identification of students with suspected disabilities; and

(e) Committing to participate in dispute resolution as provided under federal and state law.

**2229.4. Procedure for Ensuring the Provision of Special Education Services to Publicly Funded Students in Approved Independent Schools**

(a) Upon the acceptance for enrollment of a student with an individualized education program in an approved independent school, the LEA of the student's residence shall convene an IEP or 504 team meeting within 30 days. When practical, the meeting shall be held prior to the start of the academic year in which the student is enrolled. The approved independent school shall designate personnel to participate in the IEP or 504 meeting. At the meeting, the team, which includes the parent, and the student where appropriate, shall determine how to ensure the provision of a free and appropriate public education in accordance with the student's IEP.

(b) The LEA and the approved independent school together with the student's IEP team shall work collaboratively to ensure the student's services are provided in accordance with state and federal law. Services shall be provided in a timely manner, beginning with the first day of the school year when possible. It is the intent of the Board that the LEA and the approved independent school will identify solutions that minimize the loss of instructional hours to the student. The Agency shall provide technical assistance to the LEA and the approved independent school upon request.

(c) For placement purposes under the IDEA, the IEP team shall ensure the IEP process reflects the student's choice of enrollment in the approved independent school, notwithstanding Subsection 2364.3(a)(2) (Placements). In this context, "placement" refers not to the specific site of the educational placement, but to the provision of special education and related services.

(d) The student's special education and related services shall be provided in the least restrictive environment.

(e) To ensure the provision of services in the student's IEP, the approved independent school and the LEA may use any or all of the methods listed below to ensure the provision of those services, including:

1. The approved independent school recruiting and hiring special education or other professional or paraprofessional staff;
2. The approved independent school contracting directly with service providers to provide the services at the independent school if the services are not otherwise available at the independent school;
3. The approved independent school contracting with the LEA to provide the services; and
4. The LEA providing the services at a public school operated by the LEA or another public school.

(f) If there is a dispute between the LEA and the approved independent school over whether the student's special education services can be provided in accordance with the student's IEP at the independent school or otherwise, the LEA shall initiate a hearing before an independent hearing officer, the costs of which shall be borne equally between the LEA and the independent school, within 30 days of the impasse.

(g) If the hearing officer determines the approved independent school is unable to provide the required IEP services due to an inability to retain qualified staff, the LEA shall immediately convene an IEP meeting to consider alternatives.

1. The approved independent school shall not be subject to any disciplinary action or revocation of its approval by the Board under Subsection 2226.2 (Revocation or Suspension of Approval) due to its failure to enroll or continue to enroll the student.

h) This Subsection, 2229.4, shall not apply to a therapeutic independent school.

#### **2229.5. Out-of-State Programs**

(a) Subject to the provisions of 16 V.S.A §828, in order for an out-of-state independent school to be approved to receive public funds for special education purposes by the Board, the school shall be approved under the rules of its jurisdiction for the purpose of providing special education and related services to children with disabilities within its jurisdiction. Any limitation by the jurisdiction on an



independent school's special education approval, such as by category of disability served, or other comparable standard, shall also apply to the school's special education approval in Vermont.

(b) Rates paid for tuition, room, and board for students receiving special education in out-of-state schools shall not exceed the allowable costs approved by the authorized body in the jurisdiction where the school is located, except in exceptional circumstances approved by the Secretary.

#### **2229.6. Approval Procedures to Receive Public Funds**

(a) Application for public funds approval shall be made at the time of application under Sections 2224 (Application and Reapplication for Approval; Approval Process). A school that has already obtained approval from the Board may at any time submit an application for public tuition approval to the Secretary.

(b) The procedures for public tuition approval shall be the same as those for approval in accordance with Section 2224 (Application and Reapplication for Approval; Approval Process). To the extent possible, these procedures shall occur simultaneously.

#### **2229.7. Duty to Notify**

After receiving approval for public tuition, an approved independent school shall notify the Secretary within a reasonable time of any significant changes to its special education program, professional staff, governance, financial capacity, or facilities. The Secretary may, upon such notification, gather additional information from the school, including by means of a site visit. As a result, the Secretary may recommend that the Board change the school's approval for public tuition purposes. The Secretary shall employ the same procedures described in Subsection 2226.2.2 (Investigation; Due Process Hearing) to recommend a change to a school's approval status. The Board shall provide a hearing on the matter in accordance with Subsection 2226.2.2 and the requirements of Sections 1230, et seq.

#### **2229.8. Minimum Level of Service**

Approved independent schools shall be deemed to offer a minimum standard of service to a child, as required by 16 V.S.A. § 2973., if those services are offered according to a written agreement with the sending responsible agency, as required by Section 2231 (Written Agreements Required).

#### **Section 2230. Placement Prohibition**

No responsible agency, as defined by Subsections 2360.3 (Child Find), or LEA shall make a special education placement in an approved independent school ineligible to receive public funds pursuant to the conditions in Section 2229 (Approval to Receive Public Tuition; Special Education Approval), unless the placement is pursuant to:

(a) Subsection 2230.1 (Exceptional Circumstances – Approval Process);

(b) A court order; or

(c) A hearing officer's order.

### **2230.1. Exceptional Circumstances – Approval Process**

Upon application by a responsible LEA, the Secretary may permit, in exceptional circumstances, a special education placement in a school that is approved pursuant to Section 2224 (Application and Reapplication for Approval; Approval Process) but that has not been approved to receive public tuition under Section 2229 (Approval to Receive Public Tuition; Special Education Approval). In instances in which the Secretary grants such approval, tuition and associated otherwise allowable costs shall be reimbursable under subchapter 2 of Chapter 101 of Title 16 of the Vermont Statutes Annotated. Any person aggrieved by the Secretary's decision may file an appeal with the Board pursuant to 16 V.S.A. § 828.

(a) Exceptional circumstances exist when:

1. After reasonable efforts, the LEA cannot locate an appropriate public or independent school approved for special education purposes pursuant to Section 2229 to serve children with the category of disability under which the child was determined to be eligible for special education; and
2. The proposed placement is deemed appropriate by the child's IEP team.

(b) The Secretary may specify conditions under which the placement is to be carried out.

### **Section 2231. Written Agreements Required**

#### **2231.1 Agreement as to Costs**

(a) In order to obtain approval to receive public tuition, an approved school shall assure the Board that, prior to enrolling a child pursuant to Subsection 2229.1 (Enrollment: Requirements for Approved Independent Schools, Students, and LEAs), the school will enter into a written agreement with the LEA committing to the requirements set forth in Subsection 2229.3 (Assurances) and ensuring that qualified school personnel will attend planning and all IEP meetings for the student. The agreement shall outline tuition, room, board, and other costs associated with the child's attendance. For children on an IEP who are placed by a state agency or a designated community mental health agency, or any other agency defined by the Secretary, in accordance with 16 V.S.A. § 2948., the agreement shall be with the Secretary. In the instance of an emergency placement, such provisions shall be agreed upon within 30 days of the child's enrollment.

(b) The Secretary shall consult with independent schools in the state and determine maximum rates for tuition, and room and board for residential placements. These rates shall be published each year by November 30. Any amount charged by an approved school for public tuition shall not exceed the school's actual or anticipated costs of providing special education services to the student and shall not exceed the maximum rates set by the Secretary, provided that the Secretary may permit charges in excess of the maximum rates if the Secretary deems it warranted.

(c) An approved independent school that enrolls a student with an IEP pursuant to Subsection 2229.1 may bill the responsible LEA for the excess special education costs beyond those covered by general tuition. Reimbursement of the excess costs shall be based on the direct-cost rates approved by the

Secretary for services actually provided to the student consistent with the Agency of Education Technical Manual for special education cost accounting.

(d) An approved independent school that enrolls a student under Subsection 2229.1 shall provide documentation to the Secretary in order to ensure that the amounts charged are reasonable in relation to special education services provided by the school.

**2231.2. Agreement as to Non-Instructional Services.**

In order to obtain approval to receive public tuition, an approved school shall assure the Board that, within thirty days of enrolling a child with an IEP, the school will enter into a written agreement with the sending LEA or other responsible agency as to the division of responsibility for performance of non- instructional services, including compliance with special education procedural requirements. For children placed by a state agency or a designated community mental health agency, or another agency defined by the Secretary, this agreement shall be with the LEA that has educational planning responsibility for the child.

**Section 2232. Rate Approval for Therapeutic Approved Independent Schools.**

(a) The Secretary shall set, after consultation with independent schools, the maximum tuition rate to be paid by the Agency and supervisory unions or school districts to therapeutic independent schools. The rate for each therapeutic independent school shall be no more than the costs that are reasonably related to the level of services provided by the school.

(b) If a therapeutic independent school does not submit an application for rate approval by November 15, the most recent approved rate will be in effect for the following school year. The Secretary may review an approved rate at any time. An approved rate may be reviewed at any time on request of the school based on extraordinary circumstances. Therapeutic schools will supply information as requested by the Secretary.

(c) A therapeutic school's most recently approved rate shall be adjusted annually by the Secretary according to the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis. The Secretary shall announce the inflation rate to allow for sufficient time for submission of an application for approval of a new rate under subsection (d) in the event the therapeutic school determines such an application is needed. The annually-inflated rate shall become the most recently approved rate.

(d) A therapeutic school requesting a new rate shall submit an application for approval of a new rate to the Secretary by November 15 for tuition, related services, room, and board based upon the actual or anticipated costs that are reasonably related to providing educational services. Schools that also receive rates from the Agency of Human Services shall submit an application for approval of a new rate to the Secretary by May 1. Reported costs shall be only those that are net of other available restricted revenue sources. To demonstrate that the rate requested by the therapeutic school meets this standard, the therapeutic school shall submit to the Secretary the following:

1. Costs for each of the following categories, reported at the general ledger account description level, submitted in accordance with the Generally Accepted Accounting Principles published by the Financial Accounting Standards Board:

(A) Salaries for all employees and full-time equivalents, as applicable,

(B) Program-related Contractual Services,

(C) Operations-related Contractual Services,

(D) General Operating,

(E) Program,

(F) Travel/Transportation,

(G) Building – Direct,

(H) Building – Allocated,

(I) Admin I – Allocated,

(J) Admin II – Allocated, and

(K) Fringe – Allocated.

2. The school's proposed operational capacity, which shall be supported by a narrative that describes how the proposal reflects relevant circumstances including three-year historic enrollment, student acuity or changes in student acuity, availability of faculty and staff, physical space, anticipated demand for placements or change in anticipated demand for placements, and other considerations.

(e) A therapeutic school submitting an application for rate approval for the first time may submit the application at any time pursuant to this subsection.

(f) If the Secretary determines an application for new rate approval submitted under subsection (d) is incomplete, then the therapeutic school shall have 10 working days to complete the application following notice that its application is incomplete.

(g) The Secretary shall evaluate each element of the application for new rate approval submitted pursuant to subsection (d) and determine whether the school has demonstrated that the cost associated with each element is reasonably related to the level of services provided by the school. In

determining whether a cost is reasonably related to the level of services, the Secretary will consider the following: direct-cost rates approved by the Secretary pursuant to 16 V.S.A. § 2973.(b), costs approved for other therapeutic schools, regional differences in costs, demonstrated difficulty filling certified or licensed positions, tenure of faculty and staff, student acuity, educational model, students' need for stability in educational placement, and other aspects of program and student need documented in the application. Prior to conducting cost comparisons with applicant data, the Secretary shall:

1. Establish standards for developing and applying a database of comparable information to be utilized in rate determinations and publish the standards on the Agency's website;
2. Annually update the database of comparable information; and
3. Implement a procedure to document and retain the process and basis for each determination, including the comparable data applied.

(h) The Secretary shall determine the rate on a per-student basis by dividing the total costs determined in subsection (g) by the school's approved operational capacity, which shall be determined by the Secretary from the information provided in subsection (d)(2).

(i) The Secretary shall notify a therapeutic school that has submitted an application for new rate approval pursuant to subsection (d) of the final rate approval by January 15.

(j) After the Secretary approves a rate for a therapeutic school, the school shall not exceed that rate until such time as a new tuition rate is approved by the Secretary. In the case of a service required by a student's IEP that is not included within the school's approved rate, the LEA shall decide whether to contract for the service with the therapeutic school. The LEA shall provide notice of its decision to the Secretary within 5 days.

(k) A therapeutic school that is not satisfied with the final rate may request reconsideration by the Secretary. Requests for reconsideration shall be made in writing to the Secretary within 30 days of the final rate approval. Upon receiving the Secretary's answer regarding reconsideration, if the therapeutic school is not satisfied, it may file an appeal with the Board in accordance with the requirements of Section 1230, et seq. Alternatively, a therapeutic school may appeal to the Board pursuant to Section 1230, et seq. without first seeking reconsideration by the Secretary. The Board's determination of the appeal shall be final.

### **Section 2233. Standards and Regulations.**

The Board shall afford the opportunity for approved schools to participate in the development and revision of state standards that apply to approved schools.

### **Section 2234. Corrections Education Program**

The Secretary shall conduct a review of the Corrections Education Program in accordance with the procedures and standards contained within Sections 2220 through 2229.

## **Section 2235. Approval of Tutorial Programs**

Statutory authority: 16 V.S.A. § 828.

### **2235.1. Definitions**

"Tutorial program" means education provided to a student who is placed in a short-term program that is not administered by an LEA. The purpose of the program is to provide evaluation and/or treatment. This does not include home based tutorials, programs operated by a public school or collaborative, or a program of an independent school that has been approved under 16 V.S.A. § 166. The average length of stay for children in a tutorial program shall be not more than six months. The Secretary may waive the average length of stay time period for individual programs, based upon needs of the children served by the program.

### **2235.2. Procedures for Approval**

#### **2235.2.1. Application**

An application for approval or renewal of approval as a tutorial program shall include the following:

- (a) Name, address, telephone number of the tutorial program.
- (b) Name of the Chief Executive Officer or contact person.
- (c) A statement of the tutorial program's purpose and objectives.
- (d) A description of the tutorial program's enrollment, including a statement of whom it is designed to serve.
- (e) A description of the plan of organization for the tutorial program.
- (f) A tutorial program calendar.

#### **2235.2.2. Review**

Upon receipt of an application for approval, the Secretary shall appoint a committee of at least two persons to review the application and visit the tutorial program.

#### **2235.2.3. Report to the Secretary**

The appointed committee shall present a written recommendation regarding possible approval to the Secretary. A copy of the recommendation shall be sent to the tutorial program. The applicant shall be given at least 30 days to respond before a recommendation regarding approval or disapproval is made by the Secretary to the State Board.

#### **2235.2.4. Board Action**

The Secretary shall recommend approval or disapproval for action by the Board at its next regular meeting. Officials of the tutorial program shall be notified of this meeting date.

#### **2235.2.5. Term of Approval**

The Board may grant approval for a term of not more than two years. The tutorial program shall be approved prior to receiving tuition payments from a public LEA.

**2235.2.6. Renewal**

Not less than three months prior to expiration of a tutorial program's approval, the Secretary shall send an application packet and a letter notifying the program when a site visit will occur. The completed application shall be received from the tutorial program not later than 30 days prior to the scheduled site visit.

**2235.2.7. Denial, Revocation, or Suspension of Approval**

Prior to recommending denial, revocation, or suspension of approval to the Board, the Secretary shall notify the tutorial program of the reasons for the proposed action and shall afford the tutorial program an opportunity to be heard by the Board. Approval of a tutorial program shall be revoked or suspended by the Board based on a finding that the tutorial program no longer meets the criteria for approval.

**2235.2.8. Standards and Regulations**

The Board shall afford the opportunity for approved tutorial programs to participate in the development and revision of State standards that apply to tutorial programs.

**2235.3. Criteria for Approval**

In order for a tutorial program to obtain approval or renewal of approval from the Board, the program shall meet both the general and special education requirements in the following areas:

- (a) The instruction and methods of instruction offered are age and ability appropriate for the child, and are coordinated with the child's responsible LEA as set forth in subsection (j) below.
- (b) The tutorial program has sufficient facilities and materials or access to other facilities and additional materials as necessary to provide an appropriate education.
- (c) The tutorial program's facilities and operation comply with local, State, and federal requirements pertaining to the health and safety of children.
- (d) The tutorial program employs an adequate number of professional staff for the population served and these staff members are qualified by training and experience in the areas to which they are assigned.
- (e) Teachers providing or supervising the provision of special education have licensure and endorsement as would be required for the equivalent work in a Vermont public school.
- (f) All professional staff have relevant experience and/or training in the duties to which they are assigned.
- (g) The tutorial program maintains a register of the daily attendance of each of its students and reports the attendance to the responsible LEA.

(h) The tutorial program maintains an operating schedule that includes instruction for no less than ten hours per week unless inconsistent with medical and/or educational recommendations. The operating schedule shall be sufficient to ensure that the instructional services address the individual needs of a child with disabilities and are consistent with the child's IEP.

(i) The tutorial program has the financial capacity to carry out its educational purposes for the period of approval.

(j) The tutorial program coordinates educational services with the responsible LEA, including credit for coursework for high school, and coordinates with other responsible agencies such as the Department for Children and Families, community mental health centers, and family-parent child centers by:

(1) Contacting the responsible LEA(s) (see 16 V.S.A. § 1075.) in order to access school records and determine the special education status of the child.

(2) Reviewing the IEP, the child's needs, and the tutorial's own ability to implement the IEP.

(3) Making a formal referral for a special education evaluation to the responsible LEA, if when receiving a child, the child is suspected of having a disability.

(4) Maintaining educational records and disclosing them to the responsible LEA and the child's parents, unless restricted by statute, court order, or other legally binding document specifically revoking those rights.

(5) Participating in evaluation procedures and in the development of IEPs, including plans for reintegration and transition services.

(6) Implementing IEPs.

(7) Providing prior notice to the responsible LEA regarding the need for a change in a child's program or placement, including long-term suspension or expulsion.

(k) In order to obtain approval, a tutorial program shall meet special education standards that apply to state and local education agencies. This shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate, in at least each of the following areas:

(1) Admissions.

(2) Discipline.

(3) Significant change in placement.

#### **2235.4. Rate Approval for Non-Residential Tutorial Programs**



(a) Each tutorial program shall annually report its rates for tuition, related services, and room and board, if applicable, to the Secretary on a form prescribed for that purpose.

(b) The rates that a tutorial program charges for tuition, related services, and room and board shall be reasonably related to the actual costs of the services provided. Reasonable relationship shall be determined by utilizing generally accepted accounting principles, such as those set forth in the Handbook (II) for Financial Accounting of Vermont School Systems.

(c) The Secretary shall review each tutorial program's annual rate report. If the Secretary concludes that a tutorial program's rates are not reasonably related to the services provided, the Secretary shall make a determination as to the maximum rate that public school districts and the Agency would pay to the tutorial program for those services and offer the tutorial program an opportunity for explanation regarding why the maximum rate the Agency would pay is not adequate. If the explanation is not satisfactory, the Secretary shall refer the matter to the Board.

(1) Upon such referral by the Secretary, the Board shall conduct a formal proceeding in accordance with the requirements of Sections 1230, et seq.

(2) The Board's determination shall be final.

#### **Section 2236. Approval of Distance Learning Schools**

#### **Section 2237. Statutory Authority**

16 V.S.A. § 166.(b)(6).

#### **Section 2238. Definition**

A "Distance Learning School" means an independent school that offers a program of elementary or secondary education through correspondence, electronic mail, satellite communication, or other means and that, because of its structure, does not meet some or all the rules of the Board for approved independent schools and is ineligible to receive public tuition payments pursuant to 16 V.S.A. § 166.(b)(6).

#### **Section 2239. Procedures and Standards**

The distance learning school shall meet the procedures and standards set forth in Rules 2220-2228 above that, because of its structure, can be applied, and the following rules:

(a) The distance learning school's business and administrative offices are located in Vermont and are sufficient to meet the needs of the school.

(b) The distance learning school follows Vermont requirements for incorporation pursuant to Titles 11, 11A, and 11B of the Vermont Statutes Annotated.

(c) The distance learning school offers an educational program that is developed and assessed by staff who are other than the parents of the students and who are either employed by the school or under contract with the school.

(d) The distance learning school has policies and procedures to:

(1) Enroll students who reasonably can be expected to benefit from the instruction offered by the program.

(2) Measure student progress to ensure that students continue to benefit from such instruction.

(e) The distance learning school has policies and procedures to answer student and parent inquiries about programs and services promptly and satisfactorily and to answer specific student academic inquiries in a timely and beneficial way.

(f) The distance learning school has policies and procedures for informing students and parents of academic progress on a regular basis.

(g) Tuition:

(1) Tuition policies, including tuition collection practices, are written, clear, and provided to parents in advance of enrollment, including notification that the school shall not be eligible to receive tuition payments from school districts pursuant to 16 V.S.A. § 166.(b)(6).

(2) The distance learning school has clear written policies on refunds of tuition payments for circumstances in which students choose not to or are unable to complete the program of instruction.

(h) In the event that the school closes, the distance learning school has policies for:

(1) Tuition adjustment or refund.

(2) Preservation and release of student records.

## **Section 2240. Certification of Post-Secondary Schools**

### **2240.1. Definitions**

(a) "Post-secondary school" means any person who offers or operates a program of college or professional education for credit or degree. Significant changes to an existing post-secondary school such as changing from an associate to an undergraduate degree program, or an undergraduate to a graduate degree program, or adding a new graduate degree program shall be considered the operation of a post-secondary school for the purposes of registration and certification.

(b) "A post-secondary school whose primary operation is in the State of Vermont" means a post-secondary school that offers the majority of its courses in an institution in Vermont or that maintains its principal administrative offices in Vermont and offers post-secondary courses in Vermont.

(c) "Confer a degree" and "degree-granting authority" means the act of conferring and the authority to confer a degree to a student who has completed the requisite coursework and other requirements in a post-secondary school doing business in Vermont. An out-of-state post-secondary school that offers more than seventy-five percent of its credit hours toward a degree in its Vermont affiliate must obtain a certificate of degree-granting authority in Vermont before it may confer or offer to confer a degree.

(d) "Business organization", for the purposes of 16 V.S.A. § 176.(d)(1), may include a corporation if the program of education is provided solely for the employees or invitees of the corporation.

## **Section 2241. Certification of Post-Secondary Schools Chartered in Vermont**

### **2241.1. Statutory Authority**

16 V.S.A. § 176.

### **2241.2. [Repealed]**

### **2241.3. Application for Certificate of Approval**

A person desiring a certificate of approval or certificate of degree-granting authority from the Board shall file an application with the Secretary prior to offering post-secondary credit-bearing courses or programs and prior to admitting its first student. The application shall indicate the certification sought and shall include a description of the school that contains the following:

(a) The name, location and legal nature of the school, including a copy of the articles of association or other documents descriptive of the legal nature of the school.

(b) The credits or degree(s) that the school proposes to offer.

(c) The time schedule by which the school intends to implement the program for which certification is sought.

(d) The purpose and philosophy of education of the school.

(e) The organization of the school, including a description of its governance, administration, and affiliation with other organizations for the provision of services or programs.

(f) A description of the financial resources and policies of the school including its present and anticipated future assets, sources of funding and revenue, start-up costs for proposed programs, and operating budget. Assets and income and expenditures for the school's prior fiscal year shall be presented in an audited financial statement prepared by a certified public accountant.

(g) The school's policy regarding refund of tuition and fees collected in advance from students.

(h) A description of the school's physical plant, library, and equipment.

(i) A description of academic programs, including their level, site, and length. The application shall set forth the minimum credit requirements, if any.

(j) A statement regarding the school's professional staff, including its policies regarding appointment, promotion, tenure (if applicable), dismissal, the qualifications of professional staff, teaching and student loads, and the numbers of full-time and part-time and adjunct staff and their non-teaching responsibilities.

(k) A description of the student body, including its size and level of education at admission, methods of recruitment, and available financial aid resources.

(l) The official website address, a copy of all catalogues or brochures publicly distributed by the school, and a copy of advertisements sponsored by the school to recruit students or solicit funds.

(m) If the school is to offer credit or degree(s) through online delivery or by correspondence, a description of those activities and proof of relevant licensure.

(n) Evidence that each applicant for enrollment is notified, in writing, on an application, enrollment, or registration form to be signed by the applicant, that credits earned at the school are transferable only at the discretion of the receiving school.

## **Section 2242. Certification of Post-Secondary Schools Not Chartered in Vermont**

### **2242.1. Statutory Authority**

16 V.S.A. § 176.a.

### **2242.2. Application for Certificate of Approval**

A person desiring a certificate of approval from the Board shall file an application with the Secretary prior to admitting students. A person may file an application for a certificate of degree granting authority at any time but may not admit students without having received a certificate of approval and may not confer or offer to confer a degree without having received a certificate of degree granting authority unless exempt under Subsection 2240.1, subsection (c). The application shall include a description of the school that contains the following:

(a) The name, location, and legal nature of the school, including a copy of articles of association or other documents descriptive of the legal nature of the school.

(b) The credits or degree(s) that the school proposes to offer.

(c) The time schedule by which the school intends to implement the program for which certification is sought.

(d) The purpose and philosophy of education of the school.

(e) The organization of the school including a description of its governance, administration, and affiliation with other organizations for the provision of services or programs.

(f) A description of the financial resources of the school including its present and anticipated future assets, sources of funding and revenue, start-up costs for proposed programs, and operating budget. Assets and income and expenditures for the out-of-state school's prior fiscal year shall be presented in an audited financial statement prepared by a certified public accountant.

(g) The school's policy regarding refund of tuition and fees collected in advance from students.

(h) A description of the school's physical plant, library, and equipment.

(i) A description of academic programs, including their level, site, and length. The application shall set forth the minimum credit requirements, if any.

(j) A statement regarding the school's professional staff, including its policy regarding appointment, promotion, tenure, if applicable, dismissal, the qualifications of professional staff, teaching and student loads, and the numbers of full-time and part-time and adjunct staff and their non-teaching responsibilities.

(k) A description of the student body, including its size and level of education at admission, methods of recruitment, and available financial aid resources.

(l) A copy of all catalogues or brochures publicly distributed by the school and a copy of advertisements sponsored by the school to recruit students or solicit funds.

(m) If the school is to offer credits or degree(s) through online delivery or by correspondence, a description of those activities and proof of relevant licensure.

(n) Evidence that each applicant for enrollment is notified, in writing, on an application, enrollment, or registration form to be signed by the applicant, that credits earned at the school are transferable only at the discretion of the receiving school.

(o) A statement of commitment to offer the full program for students to complete the program in a reasonable length of time.

(p) Documentation of accreditation by any regional, national, or programmatic institutional accrediting agency recognized by the U.S. Department of Education.

### **2242.3. Registration**

A post-secondary school seeking continued operation in Vermont after initial approval from the Board shall register with the Agency within one-year of receiving approval from the Board and annually thereafter on or before September 1. Registration shall be on a form prescribed by the Secretary.

## **Section 2243. Review Process for Post-Secondary Schools Chartered In and Outside Vermont**

### **2243.1. Review of Application for Certificate of Approval for Schools Chartered In and Outside Vermont**

Upon receipt of an application for a certificate of approval, the Secretary shall appoint a review team of no fewer than two individuals. The Secretary shall appoint persons to the review team who possess general knowledge of post-secondary school standards and, where applicable, persons with specialized knowledge in any particular programs offered by the school. At least one of the persons so appointed shall be from a Vermont post-secondary school or representative organization. The team shall review the application and shall verify its contents by, if necessary, visiting the school. The team shall present a written recommendation regarding certification to the Secretary within 90 days of the receipt of the completed application unless a longer period is required and explained in writing to the applicant. A copy of the recommendation shall be provided at the same time to the applicant. The applicant shall be given 30 days to respond and, if requested, shall be afforded a hearing before the Secretary or his or her designee before a recommendation regarding certification is made by the Secretary to the Board.

### **2243.2. Review of Application for Certificate of Degree Granting Authority**

Upon receipt of an application for degree granting authority, which shall contain all the information required by an application for certification of approval and information documenting that the requirements of Subsection 2243.6, subsection (a) are met, the Secretary shall contact the Vermont Higher Education Council, which shall review the application and determine the accuracy of its contents by, if necessary, visiting the school. The Secretary may also appoint independent reviewers to accompany representatives of the Vermont Higher Education Council reviewing the school. The Vermont Higher Education Council shall present written recommendations regarding certification to the Secretary within 90 days of the receipt of the completed application unless a longer period is required and explained in writing to the applicant. The independent reviewers, if appointed by the Secretary, may either join in the recommendations of the Vermont Higher Education Council or present independent recommendations. A copy of all recommendations shall be provided to the applicant at the same time they are provided to the Secretary. The applicant shall be given 30 days to respond to the recommendations and, if requested, shall be afforded a hearing before the Secretary or his or her designee before a recommendation regarding certification is made by the Secretary to the Board. The Board shall be provided with a copy of the recommendation of the Vermont Higher Education Council and, if applicable, a copy of the recommendations of the independent reviewers.

### **2243.3. Renewal of Certification**

A school seeking renewal of certification shall apply in writing to the Secretary no later than six months prior to the end of any period of certification. Where appropriate, the school may incorporate by reference its prior application or any portion thereof. Certification of a school completing timely application shall extend until the Board acts on further certification. Any school seeking renewal that has obtained initial approval to offer or operate a program of college or professional education for credit or degree on or after January 1, 2015, shall obtain accreditation from an accrediting entity recognized by the U.S. Department of Education, in order to be considered eligible for renewal by the Board within the first 10 years of operation.

### **2243.4. Costs of Review**

Post-secondary schools seeking a certificate of approval or renewal thereof shall be responsible for payment of fees as detailed in 16 V.S.A. § 177. to the Agency to cover the costs of services related to the certification. In

addition, the applicant shall separately reimburse the non-Agency site visit review team members for travel, food and, lodging expenses associated with evaluation costs. Schools seeking a certificate of degree-granting authority shall be responsible for payment of fees as detailed in 16 V.S.A. § 177. to the Agency, a portion of which will be paid to the Vermont Higher Education Council to cover the costs of certification. In addition, the applicant shall separately reimburse individuals serving on the review team for travel, food, and lodging expenses associated with evaluation costs. Payment of the costs of services related to the certification shall accompany the application and is non-refundable. An application shall not be deemed complete until the payment is made.

#### **2243.5. Criteria for Issuance of a Certificate of Approval**

To be issued a certificate of approval, an applicant shall demonstrate the following:

##### **2243.5.1. Resources Required to Meet Stated Purposes**

The school shall submit a clear and specific statement of purpose regarding the education that it intends to provide and shall demonstrate that it has the resources, including personnel, curriculum, finances, and facilities necessary to accomplish its stated purposes. All activities conducted by the school shall be consistent with its stated purpose.

##### **2243.5.2. Stability**

(a) Sources of Income. The school shall have a plan for financing each proposed degree or program. The plan shall specify the dollar amounts and proportions of income by source, including:

- (1) Tuition and fees.
- (2) Other school-generated funds.
- (3) Federal or State funds.
- (4) Private funds.

(b) Financial Capability. The school shall demonstrate in its financial plan that it will have sufficient funds to maintain operation and shall clearly document its ability to fulfill contractual obligations to students.

(c) Management. The school shall operate under a governing structure that clearly delineates responsibility for all legal aspects of operations. The school shall demonstrate sound business and financial management by showing evidence of an internal organization for the administration of its financial resources and a school budget planning process. In addition, the school shall maintain adequate financial records audited annually by an independent certified public accountant.

##### **2243.5.3. Disclosure**

Information provided by the school to prospective students either directly or through advertisements shall not be false or misleading. The school shall be able to substantiate any claims regarding such matters as the likelihood of employment, graduate school admission, or transfer of credit. The following information shall be

disclosed on the school's website and in a general catalogue, bulletin, or other public information document provided to prospective students prior to enrollment.

- (a) Name and physical address of school.
- (b) Date of publication of the document and the period of time to which it pertains.
- (c) The school's calendar including beginning and ending dates of educational programs, holidays and other dates of importance.
- (d) The purpose and philosophy of education of the school.
- (e) A brief description of the school's physical facilities as related to the educational program.
- (f) An accurate list of all educational activities.
- (g) An indication of when specific required courses or other required learning experiences will normally be available.
- (h) Educational content of each course, or of the program if separate courses do not exist.
- (i) The length of time in hours, weeks, or months normally required for completion of the educational program.
- (j) An accurate listing of current educational providers.
- (k) An indication of the distinction, if any, between adjunct or part-time educational providers and full-time educational providers.
- (l) Policies and procedures regarding the extent to which educational experiences at other schools or other forms of learning will be counted toward meeting graduation requirements.
- (m) Requirements for graduation.
- (n) A statement of the certificates or diplomas awarded upon graduation, if any.
- (o) A statement of the degrees awarded upon graduation, if any. If a degree is to be conferred by an out-of-state post-secondary school as a result of credits earned both at a school doing business in Vermont and elsewhere as a condition of the degree, how the credits earned in Vermont are integrated into the overall degree requirements.
- (p) The system of grading or evaluation.
- (q) The school's policy establishing standards for determining adequate progress.



(r) The availability and extent of student services such as job placement services, counseling for academic and personal problems, food service facilities, and parking facilities.

(s) The availability of financial aid.

(t) An accurate representation of, and the distinction between, school accreditation, institutional memberships in professional organizations, specialized or professional program accreditation, State Veteran's Affairs-approving agency course approval, and State certification.

(u) The school's policy regarding the refund of tuition and other fees collected in advance of enrollment or class attendance.

(v) The school's "closing" policy establishing procedures that will be followed in the event that a determination is made to cease operation.

(w) The school's student records policy with provisions regarding access, disclosure, and the cost of copies.

(x) A statement that credits earned at the school are transferable only at the discretion of the receiving school.

#### **2243.5.4. Facilities**

The school's facilities shall meet all applicable State, federal and local fire, safety, health, and access standards.

#### **2243.5.5. Student Records**

The school shall have adequate procedures for the safe-keeping of student records and for complying with the requirements of 16 V.S.A. § 175.

#### **2243.5.6. Waiver of Requirements for Certification**

A school that believes that one or more of the above requirements for certification should not be applied to it may request in writing that such requirement be waived in its application for certification. Requests for waivers must accompany the application. The Board may waive requirements and grant certification when it determines that the school is capable of providing its proposed program and that the students are adequately protected.

#### **2243.6. Criteria for Issuance of a Certificate of Degree Granting Authority**

To be issued a certificate of degree granting authority, a school shall show that it meets all of the criteria for issuance of a certificate of approval and in addition shall demonstrate the following:

(a) Schools desiring to offer post-secondary degrees, including graduate degrees, shall clearly state their criteria for granting each degree and the procedure for determining that these criteria are met.

(b) Schools desiring to offer an associate degree shall provide and require completion of a minimum of 60 semester credit hours or equivalent learning experiences.

(c) Each educational program leading to a baccalaureate degree shall provide and require a minimum of 120 semester credit hours or equivalent learning experiences.

(d) Candidates for a degree shall be required to complete a coherent program of study.

#### **2243.7. Certification Limitations**

The Board may grant a certificate of approval or degree granting authority, or renewal thereof, for a period of time the Board deems reasonable and appropriate not to exceed five years and upon such conditions, terms, or limitations as the Board deems necessary. A school that has been granted either a certificate of approval or a certificate of degree granting authority shall notify the Board prior to making substantive changes in or additions to the educational program described in its last application for certification. The Board may require a school to reapply for certification following program changes that are inconsistent with the purposes and educational philosophy stated by the school in its most recent application for certification or prior to offering a new level such as changing from an associate to an undergraduate degree program, or adding a new graduate degree program, or a new degree.

#### **2243.8. Denial, Approval with Stipulations, Revocation, or Suspension of Certification**

##### **2243.8.1. Process**

Prior to recommending denial, approval with stipulations, revocation, or suspension of certification to the Board, the Secretary shall notify the school in writing of the reasons for the proposed action. The school shall be given 30 days to respond, and, if requested, shall be afforded a hearing before the Secretary or the Secretary's designee. The school shall also be afforded an opportunity to be heard by the Board before any action is taken.

##### **2243.8.2. Criteria for Revocation or Suspension**

The Board may suspend or revoke certification for good cause, including:

- (a) Failure of the school to continue to meet criteria for certification herein specified.
- (b) Failure of the school to meet the terms and conditions or limitations of certification established by the Board.
- (c) Falsification of information provided to the Board.
- (d) False or deceptive advertising.
- (e) Judgment of bankruptcy in a liquidation proceeding.
- (f) Ceasing of operation.
- (g) Refusal to permit team evaluation or other investigations provided for under these rules.
- (h) Change in accreditation status.

### **2243.8.3 Investigations.**

The Secretary may conduct any investigations of a school that the Secretary deems to be necessary and appropriate in order to ensure compliance with the terms of these rules. A school shall permit any authorized representative of the Secretary to visit its facilities and secure relevant information during the normal course of business. The school shall be notified prior to such a visit.

### **2243.8.4. Loss of Recognition for Accreditor**

(a) In the event an accrediting entity is no longer recognized by the U.S. Department of Education, any post-secondary school having received accreditation from such entity shall:

(1) Notify the Board in writing within 30 days of receiving notice or information of such loss of recognition.

(2) Apply for accreditation with a recognized accreditor at least 90 days before the school's existing accreditation expires.

(b) The post-secondary school may continue to operate under its approval by the Board pending receipt of its new accreditation, but in no case longer than 24 months. The Board may extend this period upon request of a post-secondary school going through the accreditation process.

## **Section 2250. Preservation of Post-Secondary Institutions' Student Records**

Statutory Authority: 16 V.S.A. § 175.

### **2250.1. General**

Institutions of higher education are required to maintain their student academic records in a form prescribed by the Board. The Agency is authorized to ensure that the student academic records are in appropriate form. The institution of higher education is required to inform the Board in the event it intends to close and to surrender its student academic records to a repository designated by the Board for storage. The repository is authorized to make verified copies available to students and former students.

### **2250.2. Maintenance of Academic Records**

Each institution of higher education operating in this State shall maintain its permanent records in such a manner that they could be delivered to the Board in a satisfactory form should the institution discontinue operation. At a minimum, the records shall be kept current and preserved against damage or loss.

#### **2250.2.1. Monitoring**

Upon reasonable notice, every institution shall make available to a representative of the Board its student records for the purpose of ensuring compliance with this rule. Examination of the records under this section shall take place in a manner that will not permit identification of individual students.

#### **2250.2.2. Return of Records**

A repository may duplicate the records of an institution and then return the original records to the institution.

### **2250.2.3. Institutions Discontinued Prior to April 25, 1979**

The custodian of records of institutions discontinued prior to April 25, 1979, shall be subject to the requirements of 16 V.S.A. § 175. and these rules.

### **2250.3. Form and Contents of Academic Records**

The permanent academic record of each student registered for credit at a post-secondary institution that operates in this State, whether or not such institution is chartered in this State, shall contain at a minimum:

- (a) The identification of the institution.
- (b) The identification of the student.
- (c) The record of courses satisfactorily completed and evaluation of the student's work therein, or, if records are not kept in this form, other records of the student's studies and academic progress.
- (d) Periods of enrollment covered by subsection (c) above.
- (e) The student's status at the close of the last period of enrollment.
- (f) The degree and/or certificates awarded.

A key to, or explanation of, the student's permanent academic record shall be available to accompany this record.

### **[Section 2260 to 2265 Repealed by Operation of Law.]**

### **Section 2266. Post-Secondary Online or Correspondence Schools**

An online or correspondence school that offers post-secondary credits or degrees shall also meet the applicable requirements of 16 V.S.A. §§ 176. and 176a.

### **Section 2270. Private Kindergarten Approval**

Statutory Authority: 16 V.S.A. § 166.(b).

### **Section 2271. Procedure for Approval**

#### **2271.1. Application**

Every person or entity seeking to operate as an approved kindergarten shall apply in writing to the Secretary. An application for approval shall contain the following:

- (a) The name and address of the school.
- (b) A description of the school's curriculum and methods of instruction.
- (c) A description of the school's physical facilities.

(d) A list of the school's staff and their qualifications.

(e) The operating schedule of the school

(f) A statement certifying that the school is in compliance with the Kindergarten Nursery School provisions in the Regulations for Day Care of the Department for Children and Families. (hereinafter "D.C.F. Kindergarten Regulations").

#### **2271.2. Appointment of Reviewer**

Upon receipt of an application for approval, the Secretary shall appoint an educator to review the application and visit the school. In addition, the Secretary shall contact D.C.F. to determine on his or her behalf whether the school meets the "D.C.F. Kindergarten Regulations." First priority for review shall be given to private kindergartens that are located in the vicinity of towns where the local school board or town has taken a formal vote to provide public supported kindergarten.

#### **2271.3. Review**

The appointed educator shall review the application and visit the school.

#### **2271.4. Report to the Secretary**

The appointed educator shall present a written report including a recommendation regarding approval to the Secretary. The report of the appointed educator shall incorporate the determination of D.C.F. concerning compliance with the "D.C.F. Kindergarten Regulations". A copy of the report and recommendation shall be provided at the same time to the applicant.

#### **2271.5. Secretary's Recommendation**

The Secretary shall recommend approval or disapproval for action by the Board at its next regular meeting. Officials of the kindergarten shall be notified of this meeting date.

#### **Section 2272. Criteria for Approval**

The Board shall approve a private kindergarten if it finds that:

(a) The curriculum embodies a minimum course of study, as defined in 16 V.S.A. § 906., Courses of Study, with learning experiences adapted to a student's age and ability.

(b) The school is in compliance with State requirements pertaining to the health and safety of students adopted by the Department of Labor and Industry and the Department of Health. In regards to health requirements, private kindergartens located in elementary or secondary school buildings shall comply with the Environmental Health Regulations for School Houses (Chapter 5, Subchapter 3, Vermont Health Regulations). All other private kindergartens shall comply with the Environmental Health Regulations for Day Care Facilities (Chapter 5, Subchapter 14, Vermont Health Regulations.)

(c) The director and teachers in the kindergarten are qualified through training or experience in:

(1) Structuring kindergarten learning environments that enhance cognitive and social development.

(2) Teaching skills and concepts in mathematics, language arts, science, the arts, and health that are consistent with principles of child development.

(3) Planning and leading activities that foster social and emotional growth in young children.

(4) Dealing with parents and family of children to ensure home support and to promote learning outside of the school or center.

(5) Identifying developmental delays in young children.

(d) The kindergarten maintains an operating schedule that, exclusive of time allowed for meals and recess periods, includes a total number of instructional hours that is not less than that required of a public school kindergarten. (State Board of Education Policy Manual, 1981, Section 2311.4).

(e) The facility and program meet the "D.C.F. Kindergarten Regulations."

### **Section 2273. Additional Requirements**

#### **2273.1. Records**

Approved private kindergartens shall maintain records of attendance, health, and progress for public tuition students, in a form required by the school district and in accordance with State and federal law. These records shall be transferred to the public schools no later than July 15 after the end of the school year.

#### **2273.2. Professional Development**

The director and teachers in an approved private kindergarten shall participate in professional development activities provided by the public school district.

### **Section 2274. Term of Approval**

The Board may grant approval for a term of not more than two years. A private kindergarten must be approved prior to receiving tuition payments from a public school district.

### **Section 2275. Revocation or Suspension of Approval**

Prior to recommending revocation or suspension of approval to the Board, the Secretary shall notify the kindergarten of the reasons for the proposed action and shall afford the kindergarten an opportunity to be heard by the Board. Approval of a kindergarten shall be revoked or suspended by the Board based on a finding that the kindergarten no longer meets the criteria for approval.

### **Section 2276. Effective Date**

Amendments to all Sections shall become effective 15 days after adoption is complete in accordance with 3 V.S.A. §845(d), except as follows:

(a) Section 2224 (Application and Reapplication for Approval; Approval Process) will take effect on July 1, 2024;

(b) Section 2223 [except for Subsection 2223.4 (Annual Compliance Assurance) and Subsections 2223.3.3(b) (Instructional Strategies) and 2223.3.3(c)(1) (Curriculum Content)] will take effect on July 1, 2024; and

(c) Subsections 2223.3.3(b) and 2223.3.3(c)(1) will take effect on July 1, 2025.

# Vermont State Board of Education

## Manual of Rules and Practices

### Series 2200 – Independent School Program Approval

CVR 22 000 004

Proposed Amendments (August 25, 2023) – REDLINED

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## **Section 2200 Independent School Program Approval**

Pursuant to Act 173 of 2018, as amended, these rules take effect on July 1, 2023 except the following rules which take effect on adoption: Rule 2223 (Procedure), Rule 2224 (Reciprocity), Rule 2226 (Application) and Rule 2227 (Approval).

### **Section 2220. Statement of Purpose**

The purpose of independent school approval rules is to assure effective, available, and equitable educational opportunities that are anti-racist, culturally responsive, anti-discriminatory, and inclusive for students enrolled in Vermont's approved independent schools in accordance with State and federal law and aligned with the purposes set forth in Act 173 of 2018 and Act 1 of 2019.

These rules are organized to provide clarity to independent schools regarding requirements for initial and continued approval to operate and, and if applicable, to receive public funds. Ongoing compliance with state and federal laws and regulations is expected through annual compliance assurances. Accrediting agencies that meet criteria indicating high quality, experience, and alignment with Vermont's educational values will be recognized and the schools they accredit will enjoy an accelerated approval process.

The Board believes that any distinction, exclusion, classification, restriction or preference based on any ground, such as race, ethnicity, skin color, sex, sexual orientation, gender identification, language, religion, political or other opinion, disability, national, social or geographic origin, citizenship or immigration status, income or property, birth or other status, which has the purpose or effect of denying or impairing the recognition, enjoyment, or exercise of fundamental rights and freedoms in the political, economic, social, cultural, civil or any other field should be carefully considered and rejected if it results in unlawful discrimination or interferes with the delivery of effective, available, and equitable educational opportunities. The Board recognizes that discrimination is practiced by individuals and groups, and it is expressed systemically through the structures, laws, practices, and policies of public and private institutions, employers, and organizations.

In addition to the non-discriminatory protections in Subsection 2223.2 (Nondiscrimination Requirements for Approved Schools), discrimination against any student pursuing an education or participating in the general life or activities of a school as a result of or based upon, ethnicity, caste, language and linguistic diversity, socio-economic status, religion, housing status, and non-citizenship or immigration status, does not embody the intent of the Board to promote welcoming, inclusive, bias-free environments for learning in Vermont's schools.

These rules further require all schools to strive for a culturally responsive pedagogy that critically examines and imparts a comprehensive historical and socially conscious understanding of:

- (a) the causes and effects of bias and discrimination as a result of, or based upon, the reasons set forth in Subsection 2223.2 of this Manual and in this Statement of Purpose;
- (b) why all persons should have equitable access to social and economic opportunity;
- (c) why persons and institutions must identify and prevent individual, group, and systemic racism, discrimination, and other forms of unfair treatment; and

(d) the positive and multi-faceted contributions of different social, cultural, racial, linguistic ethnic and indigenous groups to the historical and ongoing project of building and strengthening democracy in the United States and globally.

Nothing herein shall be construed to entitle any student to educational programs or services identical to those received by other students in the same or different schools. These rules are in addition to and, unless otherwise specifically stated, do not supersede other rules adopted by the Agency of Education or contained in the Vermont State Board of Education Manual of Rules and Practice. Nothing herein shall create a private right of action.

**Section 2221. Statutory Authority.**

16 V.S.A. §§ 164(14), 166., 2958(e), and 2973; 2019 Act No. 1.

**Section 2222. Definitions.**

“Agency” means the Vermont Agency of Education.

“Anti-discrimination” means actions, behaviors, programs and policies by school staff, students, school directors, contractors, and community members involved in the daily operations of schools that are necessary to counter discrimination as defined in this Manual, and that promote a fair, just and equitable learning environment for all students.

“Anti-racist” means actions, behaviors, programs, and policies designed and/or implemented by school staff, students, school directors, contractors, and community members involved in the daily operations of schools that are necessary to counter racism as defined in this Manual and that promote a racially inclusive learning environment for all students.

“Approved Independent School” means an independent school that meets the requirements in Rule 2223.3 as well as the requirements in SBE Rule 2225 (tuition from public funds) and SBE Rule 2226 (Application). Sections 2223 and 2224, as well as the requirements in Section 2229 (Approval to Receive Public Tuition; Special Education Approval).

“Approved Independent School Ineligible to Receive Public Funds” means an independent school that meets the requirements in SBE Rules 2226 (Application) and 2227 (Approval) but does not meet the requirements of rules concerning the delivery of special education services in SBE Rule 2229, in Section 2223 and 2224 but does not meet the requirements of rules concerning the delivery of special education services in Section 2229.

“Board” (or “State Board” or “SBE”) means the Vermont State Board of Education.

“Caste” refers to a hierarchical social system of exclusion and dehumanization based on invented notions of purity and contamination. Those who suffer the stigma of caste are often deprived of or severely restricted in the enjoyment of their civil, political, economic, social, and cultural rights.

“Civic and Community Engagement” means individual and/or collective actions that identify and address issues of public importance, and that provide people with opportunities that contribute to the current and future development of their communities and a democratic society. Civic and community engagement can take place in a variety of formal and informal settings, including, but not limited to, those in governance and electoral politics, educational, cultural, and recreational activities, community service and social justice movements.

“Critical thinking” is the objective examination of an issue to discern or form a judgment based on evaluating evidence, checking assumptions, and adopting multiple perspectives to better understand the question at hand.

“Culturally and Linguistically Diverse Students” are those who are members of home, cultural and social environments whose experience and success is enhanced by schools demonstrating respect for a multitude of linguistic competencies and fostering systems of academic and social inclusion that acknowledge the fundamental importance of such competencies. Linguistic competencies are cultural and linguistic resources that students, families and communities draw upon, including, but not limited to, a variety of languages, including Indigenous languages, multiple-sign languages, and African American Vernacular English and other dialects.

“Culturally responsive teaching” is an evidence-based approach that incorporates knowledge of diverse cultures, languages, and perspectives into learning activities and curriculum design, including connecting students' life experiences and ways of learning, that helps students to both access rigorous curriculum and to develop higher-order thinking skills.

“Culture” means a set of distinctive spiritual, material, religious, intellectual, creative, and emotional attributes of a society or social group, and encompasses, in addition to art and literature, lifestyles, ways of living together, values, traditions, and beliefs.

“Discrimination” is intended to describe any exclusion, restriction, or preference based on any protected class consistent with state and federal law that has the purpose or effect of denying or impairing the recognition, enjoyment or exercise of an individual’s fundamental rights. Discrimination is practiced by individuals and groups, and it is expressed systemically through the structures, laws, practices, and policies of public and private institutions, employers, and organizations.

“Ethnic Group” means a group whose members identify with each other based on certain criteria, including a common history, ancestry or culture, religion, nationality, social or geographic origin, skin color, language, and experiences of discrimination and social exclusion, persecution, or other inhuman treatment.

“Ethnic Studies” means interdisciplinary, age appropriate and grade-appropriate curricula and programs dedicated to the historical and contemporary study of race, ethnicity, and indigenous peoples (including the Indigenous People of Vermont). This requires a critical examination of the experiences and perspectives of racial and ethnic groups and indigenous peoples that have suffered systemic oppression, marginalization, discrimination, persecution, and genocide within and outside the United States. “Ethnic Studies” may involve a critical examination of these experiences and perspectives through the lens of the characteristics of social identity groups.

“Ethnicity” means a concept that embodies a wide range of criteria used to identify ethnic groups, such as a common history, ancestry or culture, national, social or geographic origin, skin color, languages, religions, tribe or indigenous people (including the Indigenous Peoples of Vermont), or various combinations of these characteristics.

“Inclusive” or “Inclusion” means school-based curricula, programs, activities, resources, and policies that ensure that academic learning, co-curricular and social offerings, and all other aspects of school life are based on the values of equality, equity, social and cultural diversity, freedom and dignity, so that all students are valued as unique individuals and can achieve their full academic and social potential.

“Individualized Education Program (IEP)”: means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with ~~SBE Rule~~Section 2363.

“Intercultural Competency” describes practices and actions to pursue deep understanding, mutual respect, and willingness to learn about the cultures of all people, especially those who have been marginalized, silenced, and/or undervalued.

“Interdisciplinary” means examining and teaching a subject from multiple academic perspectives and encouraging students to engage with and to synthesize diverse perspectives and narratives, including those from their lived experiences, into a coherent understanding or analysis.

“Language” means systems of conventional and unconventional spoken, visual-manual, technological, and written symbols, which human beings use personally and as members of social and cultural groups to express themselves; shape identity; acquire knowledge, mediate power, play, create, and imagine; build and sustain familial, social, and cultural bonds; and express a wide range of personal needs, aspirations, and emotions.

“Linguistic diversity” means the immense body of diverse and complex systems of communication and expression (e.g., official languages, endangered languages, indigenous and minoritized languages, dialects, and non-verbal languages and communication), the respect for and preservation of which is fundamental to students’ experience and academic success; eradicating bias, racism, and discrimination; and fostering practices and systems of inclusion, equality, equity, and diversity in our schools and communities.

~~Therapeutic Approved Independent School (or Therapeutic Independent School or Therapeutic School): means an approved independent school that limits enrollment to students who are on an IEP or plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to a written agreement between an LEA and the school. These schools are eligible to receive public tuition, which is inclusive of both general and special education services and is at a rate approved by the Agency of Education.~~

“Local Education Agency (LEA)”: as that term is defined in 20 U.S.C. § 7801-(26), means the supervisory union or supervisory district.

“Neurodiversity” refers to the natural and important variation in how human minds think and is not to be cured or corrected to fit social norms. These differences can include autism, attention deficit hyperactivity disorder, dyspraxia, dyslexia, dyscalculia, and Tourette Syndrome.

“Race” means any invented or socially constructed concept that is used to categorize groups and cultures on the basis of physical differences transmitted through descent, like skin color.

“Racism” means the theory, belief, or act of making value judgements that are based on racial, ethnic, or cultural differences, or which advances the claim that racial, ethnic, or cultural groups are inherently superior or inferior, thus explicitly arguing or implying that some groups are entitled to dominate, exploit, exclude, or eliminate others presumed to be inferior. Racism is practiced by individuals and groups, and it is expressed systematically through the structures, laws, regulations, practices and policies of public and private institutions, employers, and organizations.

“Recognized Independent School”: means an independent school meeting the requirements in 16 V.S.A. § 166-(c). A recognized independent school is not eligible to receive public tuition.

“Restorative Practices” refer to the whole-school, relational approaches to building school climate and addressing student behavior that fosters belonging over exclusion, social engagement over control, and meaningful accountability over punishment. It encourages members of the school community to be constantly present, attending to needs as they arise. It exercises their ability to be dynamic rather than static in their responses. Restorative approaches also begin with proactive structures to build positive relationships and communication and create a space for people to express themselves—their strengths, assets, responsibilities, and also their vulnerability.

“Secretary”: means the Secretary of the Vermont Agency of Education.

“Social Identity Group” means a group of people who share common characteristics that shape their identify and promote a sense of unity, including sex, sexual orientation, gender identification, disability, class, socio-economic status, or other characteristics that are fundamental to identity.

“Special Education Fees”: means funds paid by a school district or supervisory union to an approved independent school for special education services beyond those covered by general education tuition, as defined in 16 V.S.A. § 2973.(b)(2)(B).

“Special Education Services”: means specially designated instruction at no cost to the parent, to meet the unique needs of an eligible student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions and in other settings; and instruction in physical education.

“Specially designed instruction” means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student's disability and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the State that apply to all children. This definition is intended to be consistent with the term "Special Education Services" as used in SBE Rule Subsection -2360.2.12.

Student: means a person age three through age twenty-one.



“Student who requires additional support”: means a student who meets the criteria defined in 16 V.S.A. § 2942.(8).

“Therapeutic Approved Independent School” ~~(or “Therapeutic Independent School” or “Therapeutic School”)~~: means an approved independent school that limits enrollment to students who are on an IEP or plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. and who are enrolled pursuant to a written agreement between an LEA and the school. These schools are eligible to receive public tuition, which is inclusive of both general and special education services and is at a rate approved by the Agency of Education.

“Tuition”: means funds paid by a school district to an approved independent school for general education in accordance with ~~SBE Rule 2225~~Section 2228.

### **Section 2223. ~~Requirements to Operate as an~~Procedures for Approved Independent Schools and Approved Independent Schools Ineligible to Receive Public Funds.**

Every person or entity desiring to operate an elementary or secondary school as either an approved independent ~~elementary or secondary school~~ or an approved independent school ineligible to receive public funds shall apply in writing to the Secretary and meet the requirements of law and these rules. Approved schools shall be permitted to operate for a term of five years or less, as set by the Board, and may submit a new application for approval (reapproval) prior to the expiration of each term. The Board may revoke, suspend, or impose conditions upon an approved school according to process set forth in these rules.

#### **2223.1. General Requirements for Approved Schools**

All approved schools must comply with statutory requirements and the Board’s rules for approved schools and must provide a minimum course of study pursuant to 16 V.S.A. §906. An approved school must have the resources required to meet its stated objectives, including financial capacity, faculty who are qualified by training and experience in the areas in which they are assigned, and physical facilities and special services that are in accordance with state and federal law or regulation.

#### **2223.2. Nondiscrimination Requirements for Approved Schools**

No student in an approved school shall be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity as the result of, or based upon, the student’s race, gender, color, creed, national origin, marital status, sexual orientation, gender identity, or disability, or any other reason set forth in state or federal non-discrimination requirements.

##### **2223.2.1. Nondiscrimination Statement and Policy**

Each approved school shall maintain a statement of nondiscrimination that is consistent with the Vermont Public Accommodations Act, Title 9 Vermont Statutes Annotated, Chapter 139 and the Vermont Fair Employment Practices Act, Title 21 Vermont Statutes Annotated, Chapter 5, Subchapter 6. The statement shall be displayed on its website and included in the school’s application materials. The school shall abide by its nondiscrimination policies in all aspects of the school’s recruitment, enrollment, operation, and employment activities.

(a) The Agency shall develop a standardized method to assess a school’s compliance with this subsection that shall be used to investigate complaints of non-compliance and by the Agency when evaluating

applications for approval by accredited and non-accredited schools. The method shall provide indicators of compliance and shall be made available to schools for their ongoing self-assessment.

### **2223.3. Specific Requirements for Approved Schools**

Each approved school shall maintain a safe, accessible, orderly, civil, flexible, and positive learning environment, free from hazing, harassment, and bullying. Educational opportunities shall be provided in an equitable, anti-racist, culturally responsive, anti-discriminatory, and inclusive manner, based on sound instructional and classroom management practices and clear discipline and attendance policies that are consistently and effectively enforced.

#### **2223.3.1. Physical Facilities**

Each approved school must ensure that its physical facilities, including plant, materials, and equipment, meet all applicable state and federal requirements pertaining to the health, safety, and privacy of students.

(a) Each residential school must arrange, on an annual basis, a fire safety inspection performed by the Department of Public Safety or its designee. A certificate executed by the inspecting entity, declaring satisfactory completion of the inspection, and identifying the date by which a new inspection must occur, shall be posted at the school in a public location. The school shall provide a copy of the certificate to the Secretary of Education after each annual inspection. The school shall pay the actual cost of the inspection unless waived or reduced by the inspecting entity.

(b) Each school must have classroom, laboratory, library, and other facilities necessary to operate its program.

#### **2223.3.2. Financial Capacity, Solvency, and Stability**

An approved school must maintain the financial capacity to meet its stated objective during the period of its approved status and must adhere to all required financial reporting requirements. For purposes of these rules, "financial capacity" means that anticipated revenue and funds on hand are sufficient to meet a school's stated objectives.

(a) Each approved school must file federal or state tax returns when due, unless an extension is granted; meet payroll and state payroll tax obligations as they are due; maintain required retirement contributions; ensure that designated funds are not used for nondesignated purposes; fully comply with the financial terms of its secured installment debt obligations; and not become insolvent as defined by 9 V.S.A. §2286(a).

(b) An approved school shall report to the Secretary within five days after its knowledge of any of the following events, unless the failure is de minimus:

1. the school's failure to file its federal or State tax returns when due, taking into account permissible extensions of time;

2. the school's failure to meet its payroll obligations as they are due or pay federal or State payroll tax obligations when due;

3. the school's failure to maintain required retirement contributions;
4. the school's use of designated funds for nondesignated purposes;
5. the school's inability to fully comply with the financial terms of its secured installment debt obligations over a period of two consecutive months, including the school's failure to make interest or principal payments as they are due or to maintain any required financial ratios;
6. the withdrawal or conditioning of the school's accreditation on financial grounds by a private, State or regional agency recognized by the Board for accrediting purposes; or
7. the school's insolvency as defined in 9 V.S.A. § 2286(a).

### **2223.3.3. Instruction, Faculty, and Special Services**

To demonstrate that it provides a minimum course of study as defined by 16 V.S.A. §906, an approved school must maintain a written description of its curriculum, methods of instruction, evaluation procedures, and the special services that it has designed to achieve its educational objectives, to demonstrate that it provides a minimum course of study as defined by 16 V.S.A. §906.

#### (a) Professional Staff.

1. The school must employ a sufficient number of professional staff for the population served who are qualified by training and experience in the areas in which they are assigned as measured by the following:
  - A. for teachers, a minimum of a bachelor's degree in their field of instruction or substantially equivalent time in training and experience in their field of instruction; and
  - B. for all professional staff, relevant experience and/or training in other programs not related to teaching or administrative duties to which they are assigned.
2. The school must have an adequate program of continuing professional staff development. The school shall keep a general description of its staff meetings, expectations for professional growth of staff, and information describing the school's inservice training, financial, and other support given to staff for professional development.
3. Job descriptions for every position that describe training, experience, and degrees required for the position shall be maintained. The school shall also maintain a file with a resume, vita, or description of appropriate qualification for each current staff member, along with their current assignment, length of service, and description of duties not related to teaching or administration.

#### (b) Instructional Strategies. Educators shall be supported in:

1. examining their own identities and biases and fostering a learning environment that recognizes multiple ethnic, cultural and racial perspectives; presents and critiques historical counter-narratives; and encourages students to examine issues and expressions of social equity within and beyond the classroom or school;
2. modeling and setting high expectations for all students - regardless of a student's prior academic experience, family background, socio-economic status or (dis)abilities and promoting respect for student differences;
3. recognizing the essential role that language acquisition and literacy play in the lives of students, especially culturally and linguistically diverse students, not only in respect to listening, speaking, reading, and/or writing, but as home and community practices that shape a culturally responsive understanding of students' social, racial, linguistic, and ethnic identities, of their communities, and of their world;
4. communicating in culturally and linguistically responsive ways;
5. providing learning experiences that are designed for neurodiversity with multiple ways for students to access learning;
6. using educational and assistive technology to reduce barriers to learning and heighten student engagement;
7. cultivating student agency by providing multiple ways for students to engage with and demonstrate their new learning;
8. emphasizing an inquiry-driven approach to all units of study and bringing real-world issues into the classroom;
9. heightening the relevance and importance of learning objectives and providing mastery-oriented feedback;
10. employing the use of data to adapt pedagogy to unique student needs and incorporate student feedback into instructional design and curricula;
11. teaching students how to develop metacognitive and social emotional skills that improve their academic outcomes;
12. designing learning experiences that improve students' wellbeing, including opportunities for physical movement in the classroom; and
13. fostering a positive classroom culture using restorative practices where appropriate.

(c) Curriculum Content. Curriculum shall be equitable, anti-racist, culturally responsive, anti-discriminatory, inclusive and accessible to families and community members.

1. All approved schools shall enable students to engage annually in rigorous, relevant, and comprehensive learning opportunities that are socially and culturally responsive and allow them to demonstrate proficiency in ethnic and social equity studies.

2. The course of study offered shall be adequate to meet the educational purposes of the school and to provide a minimum course of study that is age and ability appropriate.

(d) Special Services. Schools shall maintain special services necessary to meet the requirements of a minimum course of study and its educational purposes, including library services, administrative services, guidance and counseling services, and a system of records by which student progress may be assessed.

#### **2223.3.4. Maintaining Safe and Equitable Access to Educational Opportunities**

Approved schools are expected to provide for the safety, protection, and equitable treatment of students and school personnel in accordance with state and federal laws. School governance boards and leadership teams shall make every effort to remain current in understanding and implementing recognized best practices and procedures in this regard and shall also take care to remain compliant with laws adopted after the promulgation of these rules. At a minimum, each approved school shall develop and maintain the following:

(a) a comprehensive plan for responding to student misbehavior, as required by 16 V.S.A. §1161(a), that it is clear and consistently enforced to address student behavior, language, classroom attendance, clothing, and treatment of property, as well as consequences for violations of policy;

(b) harassment, hazing, and bullying prevention policies pursuant to 16 V.S.A. §166(e) and procedures for dealing with harassment, hazing, and bullying of students pursuant to chapter 9 subchapter 5 of Title 16 of the Vermont Statutes Annotated;

(c) practices that comply with the requirements of 16 V.S.A. §253 - §255 relating to confidentiality and maintenance of records, criminal record checks, and checks of the Child Protection Registry and the Vulnerable Adult Abuse, Neglect, and Exploitation Registry;

(d) procedures that do not permit any person listed on the State of Vermont, Department of Public Safety, Vermont Crime Information Center Sex Offender Registry to work at the school as an employee, volunteer, or work study student pursuant to 16 V.S.A §260;

(e) practices that ensure that adults employed in the school receive orientation, information, or instruction on the prevention, identification, and reporting of child sexual abuse, as defined in 33 V.S.A. §4912(8), and sexual violence and opportunities for parents, guardians, and other interested persons to receive the same information as required by 16 V.S.A. §563(a);

(f) opportunities that provide access for eligible students to participate in dual enrollment, accept credit awarded, collect enrollment data, and provide support to students in accessing the opportunity and otherwise transitioning to postsecondary enrollment pursuant to 16 V.S.A. §944;

(g) a procedure for providing the names and addresses of publicly funded students enrolled at the approved school to the school's regional career technical education (CTE) center;

(h) An enrollment policy designed to serve children with disabilities;

(i) a concussion management action plan and information that is developed, distributed, and acknowledged by required personnel and appropriate training for athletic coaches in the recognizing and managing the risks of concussions and other head injuries in accordance with 16 V.S.A. §1431;

(j) comply with requirements of 18 V.S.A. §1120 et seq., regarding the immunization of students against disease;

(k) maintain a policy pursuant to 16 V.S.A. §912 regarding a student's right to be excused from participating in any lesson, exercise, or assessment requiring the student to participate in or observe the dissection or harm of an animal;

(l) provide students access to menstrual products at no cost pursuant to 16 V.S.A. §1432;

(m) comply with supporting and protecting the rights of married, pregnant, or parenting students pursuant to 16 V.S.A. §1073;

(n) permit students with life-threatening allergies or with asthma to possess and self-administer emergency medication in accordance with 16 V.S.A. §1387;

(o) an all-hazards emergency operations plan consistent with 16 V.S.A. §1480;

(p) fire and emergency preparedness drills pursuant to 16 V.S.A. §1481;

(q) a written building access control and visitor management policy consistent with 16 V.S.A. §1484;

(r) practices that promote an equitable, just, and inclusive community of adults and students, foster a culture of learning, and inspire students to respect and value diversity in its many forms;

(s) after July 1, 2025, behavioral threat assessment policies, procedures and reporting mechanisms consistent with 16 V.S.A. §1485; and

(t) practices to remain aware of and compliant with any rule or regulation related to the safety, protection, and equitable treatment of students and school personnel.

### **2223.3.5 Other Required Activities**

In addition to activities outlined in Subsection 2223.3.4 (Maintaining Safe and Equitable Access to Educational Opportunities), each approved school shall:

(a) provide to the parent or guardian responsible for each of its students, prior to accepting any money for a student, an accurate statement in writing of its status under 16 V.S.A. §166(b). Failure to comply with this provision may create a permissible inference of false advertising in violation of 13 V.S.A. §2005;

(b) maintain a register of the daily attendance of each of its enrolled students;

(c) provide to the Secretary on October 1 of each year the names, genders, dates of birth, and addresses of its enrolled students. Within seven days of the termination of a student's enrollment, the approved school shall notify the Secretary of the name and address of the student. The Secretary shall notify the appropriate school officials as provided in 16 V.S.A. §1126;

(d) maintain an operating schedule that includes a total number of instructional hours each year that is not less than that required of a public school serving the same grades;

(e) comply with legal requirements concerning nondiscriminatory school branding;

(f) measure attainment of standards for student performance for publicly funded students, as required under 16 V.S.A. 164(9), and provide data related to the assessments to the Secretary as required by 16 V.S.A. §166(g); schools are encouraged to provide the data to local education agencies;

(g) provide information to sending school districts related to reporting on weighting categories, as requested, pursuant to 16 V.S.A. §4010(c);

(h) comply with 16 V.S.A. §12 requiring select school officials to subscribe to an oath or affirmation to support the U.S. Constitution, Vermont Constitution, and all state and federal laws;

(i) conduct exercises in commemoration of the birth, life, and services of Abraham Lincoln, pursuant to 16 V.S.A. §907;

(j) policies related to record maintenance and retention that, at minimum, provide for the timely and confidential disposition of student records in the event of the school's closure; and

(k) comply with other applicable state and federal requirements pertaining to approved schools.

### **2223.3.6. Independent Schools Operating a Boarding Program**

To be approved under these rules, an independent school that operates a boarding program, enrolls students as boarding students, or operates a residential treatment program shall be accredited by a state or regional agency recognized by the Board for accrediting purposes or shall be licensed as a residential childcare facility by the Department for Children and Families. This requirement does not apply to an independent school that enrolls only day students.

#### **2223.4. Annual Compliance Assurance**

(a) Each approved school shall attest to continued compliance with applicable requirements of this rule and federal and state law on or before January 15<sup>th</sup> of each year.

(b) In consultation with the Board, the Agency shall prepare and make available a simplified form to be used to meet the requirement of this section, that shall be made available to schools at least 90 days from the date it is due. The form shall include the school's attestation, and necessary supporting evidence, that it meets the requirements of Subsection 2223.2 (Nondiscrimination Requirements for Approved Schools) using the self-assessment tool indicated in that subsection, and an assurance of compliance with Subsection 2229.1 – 2229.5 (( Enrollment: Requirements for Approved Independent School, Students, and LEAs),(Staffing), (Assurances), (Procedure for Ensuring the Provision of Special Education Services to Publicly Funded Students in Approved Independent Schools), (Out-of-State Programs)), if applicable. Incomplete or modified forms will not be accepted as meeting the requirement set forth in subsection (a) above. Schools may request and the Secretary may grant an extension of up to 45 days to submit the annual compliance assurance form for good cause shown, if the request is submitted 14 or more days before the due date.

(c) If a school fails to submit an acceptable annual compliance assurance form by the date set by the Agency, the school will be considered out of compliance with subsection (a) above. The Secretary shall immediately notify the school of its noncompliance and the school shall have five days to come into compliance. If the school fails to submit an acceptable compliance assurance form to the Agency within five days of notification by the Secretary, the Secretary shall launch an investigation pursuant to Subsection 2226.2.2 (Investigations; Due Process Hearings), which shall be promptly followed by a due process hearing set forth in (e) of the same Subsection. If, after a hearing, the Board determines that the school intentionally violated this subsection pursuant to 2226.3(a) (Revocation or Suspension of Approval), it shall decide whether to revoke, suspend, or impose conditions on the school's approval status.

#### **2223.5. Confidential Information**

Information provided by a school under these rules that is not already in the public domain is exempt from public inspection and copying under the Public Records Act and shall be kept confidential according to 16 V.S.A. § 166(b)(8).

An application shall meet the requirements of SBE Rule 2226(Application).

Upon receipt of an application for initial approval or renewal of approval, the Secretary shall appoint a review committee of at least two persons.

##### **2223.1 Visit.**

The review committee shall visit the school. To the extent possible, the visit shall be coordinated by the Secretary with other agencies of state government that inspect such facilities.

##### **2223.2 Report.**

The committee shall write a report, including a written initial recommendation regarding approval, to the Secretary. A copy of the initial recommendation shall be provided at the same time to the applicant. The



applicant shall be given 30 days to respond before the Secretary makes a final recommendation regarding approval to the State Board. The Secretary's final recommendation shall contain the findings of other agencies of state government that inspect such facilities.

**2223.3 General Conditions for Approval.**

Approval shall be recommended for an independent school offering elementary or secondary education that provides a minimum course of study pursuant to 16 V.S.A. § 906, and that substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools, including Rule 2226 and Rule 2227. Effective July 1, 2023, an independent school that intends to accept public tuition must also meet the requirements of SBE Rule 2229. Effective July 1, 2023, a school meeting approval requirement in SBE Rules 2226 (Application) and 2227 (Approval) but not Rule 2229 (Approval to Receive Public Tuition, Special Education Approval) may be recommended for approval but may not receive public tuition.

**2223.4 Review.**

The Secretary shall designate a date for action by the Board. Officials of the school shall be notified of this date.

**2223.5 Renewal.**

Not less than six months prior to expiration of a school's approval, the Secretary shall send an application packet and a letter notifying the school when the site visit will occur and that the completed application must be received from the school not later than 30 days prior to the scheduled site visit.

**2223.6 Extension.**

Approval of a school completing a timely application for further approval shall extend until the Board acts on further approval.

**2223.7 Termination.**

Approval of an independent school that fails to complete timely application for further approval shall terminate on the date specified in the most recent approval action.

**2223.8 Revocation or Suspension of Approval.**

Prior to recommending revocation or suspension of approval, the Secretary shall initiate a formal investigation pursuant to rule 2223.9 (Complaints; Investigations). Following the formal investigation, the Secretary shall share the findings with the Council of Independent Schools. The Council shall consider the findings from the investigation and the Secretary's proposed resolution and issue a written opinion on the same. If, after receiving the Council's opinion, the Secretary determines that revocation or suspension of approval is warranted, the Secretary shall notify the State Board of the recommendation and provide notice to the school. The State Board shall hold a hearing pursuant to 3 V.S.A. chapter 25 to consider the Secretary's recommendation.

(a) After providing an opportunity for hearing, the Board may revoke, suspend, or impose conditions on the approval of an approved independent school for:

- (1) Failure to demonstrate that the school has the resources required to meet its stated objectives;
- (2) Failure to comply with statutory requirement or the Board's rules for approved independent schools;
- (3) Failure to report any of the financial events listed in (b) below; or
- (4) Failure to make an annual enrollment report to the Secretary as required by 16 V.S.A. § 166.(b)(4).

~~(b) An approved independent school shall report to the Secretary within five days after its knowledge of any of the following events, unless the failure is de minimus:~~

~~(1) The school's failure to file its federal or State tax returns when due, taking into account permissible extensions of time;~~

~~(2) The school's failure to meet its payroll obligations as they are due or pay federal or State payroll tax obligations when due;~~

~~(3) The school's failure to maintain required retirement contributions;~~

~~(4) The school's use of designated funds for nondesignated purposes;~~

~~(5) The school's inability to fully comply with the financial terms of its secured installment debt obligations over a period of two consecutive months, including the school's failure to make interest or principal payments as they are due or to maintain any required financial ratios;~~

~~(6) The withdrawal or conditioning of the school's accreditation on financial grounds by a private, State or regional agency recognized by the Board for accrediting purposes; or~~

~~(7) The school's insolvency as defined in 9 V.S.A. § 2286.(a).~~

~~(c) If the State Board reasonably believes that an approved independent school lacks the financial capacity to meet its stated objectives during the period of its approved status, the Board shall so notify the school in writing and shall act in accordance with the procedure set forth in 16 V.S.A. § 166.(b)(8)(B).~~

~~(d) If the State Board, after having provided the school a reasonable opportunity to respond to the Board's notification, does not find that the school has satisfactorily responded or demonstrated its financial capacity, the Board may establish a review team that, with the consent of the school, includes a member of the Council of Independent Schools, to:~~

~~(1) Conduct a school visit to assess the school's financial capacity;~~

~~(2) Obtain from the school such financial documentation as the review team requires to perform its assessment; and~~

~~(3) Submit a report of its findings and recommendations to the State Board.~~

~~(e) If the State Board concludes that an approved independent school lacks financial capacity to meet its stated objectives during the period of its approved status, the State Board may take any action that is authorized by this section.~~

~~(f) In considering whether an independent school lacks financial capacity to meet its stated objectives during the period of its approved status and what actions the State Board should take if it makes this finding, the State Board may consult with, and draw on the analytical resources of, the Vermont Department of Financial Regulation.~~

~~(g) Information provided by a school under this section that is not already in the public domain is exempt from public inspection and copying under the Public Records Act and shall be kept confidential according to 16 V.S.A. § 166.(b)(8).~~

### **2223.9 Complaints; Investigations.**

~~(a) The Secretary shall conduct an initial investigation of reports or complaints related to the approval standards and laws that apply to approved independent schools. If, following an initial investigation, the Secretary finds a violation of approval standards or laws that apply to approved independent schools, the Secretary should first determine whether the matter can be resolved through informal means, such as by provision of regulatory guidance, and confirm that corrective action is taken by the school. If the Secretary determines that informal means are not appropriate to the violation or if the matter has not been resolved informally, the Secretary may place the approved independent school on probation.~~

~~(b) At any time, the Secretary may convene a review team to conduct a formal investigation without first attempting an informal resolution or imposing probation.~~

~~(c) An approved independent school may appeal the imposition of probation to the State Board by requesting a hearing as provided above.~~

~~(d) The Secretary shall maintain a register of all complaints that result in imposition of probation or a formal investigation, which shall be a public record and which shall include the general nature of the complaint and action taken by the Secretary.~~

~~(e) Formal Investigations~~

~~(1) The school shall receive notification of the complaint unless contraindicated by the particular facts.~~

~~(2) If the Secretary determines that a formal investigation is warranted, the Secretary shall appoint a review team of at least two persons including a member of the Council of Independent Schools. The team will conduct the investigation and will inform the Secretary and the school of the results. The process in SBE Rule 2223.8 shall then apply.~~

~~(3) Reports of drug or alcohol use shall be referred to the state's attorney for the county in which the school is located. Reports of child abuse or neglect shall be reported to the Department for Children and Families. Reports concerning the safety of facilities, water supply, electricity, plumbing, or waste disposal systems shall be referred to the appropriate agency.~~

#### **Section 2224. Application and Reapplication for Approval; Approval Process**

Approval shall be recommended for an independent school offering elementary or secondary education that provides a minimum course of study pursuant to 16 V.S.A. § 906 and that substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools. A school meeting the requirements of Section 2223 (Requirements to Operate as an Approved Independent School or an Approved Independent School Ineligible to Receive Public Funds) and this Section, but not Section 2229 (Approval to Receive Public Tuition; Special Education Approval), may be recommended for approval but may not receive public tuition.

#### **2224.1. Standard Application Process**

All independent schools that are not accredited by a recognized accrediting agency pursuant to Section 2227 (Recognized Accrediting Agencies) shall follow the standard application process set forth below.

#### **2224.1.1. Standard Application**

An independent school seeking approval under these rules shall apply to the Secretary using a form prepared by the Secretary to meet the requirements of this section. At a minimum, the application shall solicit the information containing or describing the school's basic information, mission statement, enrollment policy, curriculum, methods of instruction, evaluation procedures, special services provided, governance information, evidence of compliance with local, state, and federal laws and regulations, staffing and instructional strategies, fiscal practices and evidence of financial capacity, operational information, appropriate assurances or disclosures, a request to receive public funds, if applicable, and any other information that the Secretary, Board, or review committee may deem important in considering whether the school meets requirements for approval. The school shall also submit a complete, unmodified annual assurance attestation form described in Subsection 2223.4 (Annual Compliance Assurance).

#### **2224.1.2. Standard Application Review, Visit, Report, and Recommendation**

Upon receipt of a complete application, the Secretary shall appoint a review committee of at least two persons. The review committee shall review the application materials and visit the school. To the extent possible, the visit shall be coordinated by the Secretary with other agencies of state government that inspect such facilities. The review committee shall examine the application materials and consider findings from its site visit and submit a report, including a written initial recommendation regarding approval, to the Secretary, and a copy sent to the applicant school. The applicant shall be given 30 days to respond before the Secretary makes a final recommendation regarding approval to the Board. The Secretary's final recommendation shall contain the findings of other agencies of state government that inspect such facilities.

#### **2224.2. Accredited Independent School Application Process**

In the case of any independent school seeking approval that has been accredited within the last five years by a recognized accrediting agency pursuant to Section 2227 (Recognized Accrediting Agency), an abbreviated application and review process described in this subsection may be used.

##### **2224.2.1. Accredited Independent School Application**

An independent school seeking approval under this subsection shall apply to the Secretary using a form prepared by the Secretary. The application shall require the school to provide evidence of accreditation from the recognized accrediting agency, basic information about the school, assurances of compliance with state specific requirements set forth in Subsections 2223.3.4 (Maintaining Safe and Equitable Access to Educational Opportunities) and 2223.3.5 (Other Required Activities) or state law, and a request to receive public funds, if applicable. The school shall also submit a complete, unmodified annual assurance attestation form described in Subsection 2223.4 (Annual Compliance Assurance).

##### **2224.2.2. Accredited Independent School Application Review, Report, and Recommendation**

Upon receipt of a complete application, the Secretary shall review the application materials and conduct an independent review of the school's compliance with the nondiscrimination provisions of these rules and applicable law. The Agency shall submit a report including a written initial recommendation regarding approval, to the applicant school. The applicant shall be given 30 days to respond before the Secretary makes a final recommendation regarding approval to the Board. A comprehensive review of programs and operations by a review committee, including a site visit, will not be required.

#### **2224.3. Review**

The Secretary shall confer with the Chair of the Board on a regular basis to ensure effective coordination in the review and approval of applications and reapplications to promote efficiency in scheduling and expediency in decision-making.

#### **2224.4. Board Approval**

The Board shall review each application for approval and consider the recommendation of the Secretary. The Board shall make findings listed in (a), (b), and (c) below, as applicable, prior to approval and may set additional conditions for approval in the exercise of its judgment.

(a) The Board shall make the following findings prior to approval of any school that submitted a standard application:

1. The description of the school in the approval application is accurate;
2. The course of study offered is adequate to meet the educational purposes of the school and to provide a minimum course of study that is age and ability appropriate;
3. The school has available support services necessary to meet the requirements of a minimum course of study and its educational purposes, including library services, administrative services, guidance and counseling services, and a system of records by which student progress may be assessed;
4. The school's description of its enrollment sufficiently state and describe how it is designed to serve children with disabilities.
5. The school has classroom, laboratory, library, and other facilities necessary to operate its program;
6. The school employs professional staff who are qualified by training and experience in the areas in which they are assigned as measured by the following:
  - A. For teachers, a minimum of a bachelor's degree in their field of instruction or substantially equivalent time in training and experience in their field of instruction.
  - B. For all professional staff, relevant experience and/or training in other programs not related to teaching or administrative duties to which they are assigned;
7. The school has an adequate program of continuing professional staff development as demonstrated in the application;
8. The school employs a sufficient number of professional staff for the population served;
9. The school substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools including nondiscrimination in admissions and operations and requirements relative to its facilities, fire drills, and the immunization of its students against disease;
10. The school maintains a register of the daily attendance of each of its enrolled students;
11. The school maintains an operating schedule that includes a total number of instructional hours each year that is not less than that required of a public school serving the same grades;
12. The school has the financial capacity to carry out its stated objectives for the period of approval evidenced by one of the following:

(A) An audit letter by a certified accounting firm from the present or prior year describing financial capacity;

(B) A notarized letter summarizing the financial status within the present or prior fiscal year signed by the board of directors or governing body;

(C) An audit from the present or prior fiscal year performed by a certified accounting firm; or

(D) A statement of financial capacity of a private, state, or regional agency recognized by the State Board for accrediting purposes concerning the school's financial capacity;

13. The school complies with the requirements of 16 V.S.A. § 255 relating to criminal record checks and checks of the Child Protection Registry and the Vulnerable Adult Abuse, Neglect, and Exploitation Registry;

14. The school complies with legal requirements concerning nondiscriminatory school branding;

15. The school has adopted a policy on record maintenance and retention that, at minimum, provides for the timely and confidential disposition of student records in the event of the school's closure;

16. the school promotes an equitable, just, and inclusive community of adults and students, foster a culture of learning, and inspire students to respect and value diversity in its many forms; and

17. The school has attested to its compliance with Vermont-specific laws and regulations by submitting a complete, unmodified annual attestation form with its application.

(b) The Board shall make the following findings prior to approval of any school that submitted an accredited independent school application:

1. The school is accredited and deemed in good standing by a recognized accrediting agency under Section 2227 (Recognized Accrediting Agencies) within the last five years;

2. The application and materials submitted sufficiently demonstrate that the school provides a minimum course of study pursuant to 16 V.S.A. § 906; and

3. The school has attested to its compliance with Vermont-specific laws and regulations by submitting a complete, unmodified annual attestation form with its application, and the Agency has independently certified compliance with the nondiscrimination provisions of these rules and applicable law.

(c) Prior to approving a school's application to receive public funds pursuant to Subsection 2229.6, the Board shall consider the recommendation of the Secretary and find that the school meets all requirements necessary for approval under these rules and applicable sections of Title 16.

#### **2224.5. Continued Approval**

Approval of a school completing a timely application for further approval shall extend until the Board acts on further approval.

#### **2224.6. Continued Accreditation**

A school accredited by a recognized accrediting agency pursuant to Section 2227 (Recognized Accrediting Agencies) shall notify the Agency within five days of any change to its accreditation status.

#### **2224.7. Reapplication**

The Secretary shall notify each school of the date that its approval status will expire not less than six months prior to its expiration and shall provide the date by which its application for reapproval is due to the Secretary. Schools that wish to remain approved without interruption shall follow the Standard Application Process or Accredited School Application Process as it applies to them. The Secretary may extend the reapplication period for good cause.

#### **2224.8. Interim Compliance Report from Accrediting Agency**

For any school accredited by a recognized accredited agency under Section 2227 (Recognized Accrediting Agencies) seeking reapplication under 2224.7 (Reapplication) whose accreditation period exceeds five years, a supplemental interim report from the accrediting agency must be submitted during the last year of the school's five-year approval by the Board and must provide information necessary to assure the Board that the school meets the approval standards. If such proof of compliance with approval standards cannot be shown, then the school must undergo the application process described in Subsection 2224.1.1 (Standard Application) in seeking continued approval.

#### **~~Reciprocity for Approved Independent Schools and Approved Independent Schools Ineligible to Receive Public Funds.~~**

~~Approval may be granted without committee evaluation and the approval process in the case of any school accredited by a state or regional agency recognized by the State Board for accrediting purposes. In addition to the accrediting agencies listed in SBE Rule 7320, which the Board shall continue to recognize until July 1, 2024, the State Board recognizes the Association of Independent Schools in New England and the New England Association of Schools and Colleges. Any accreditation from a recognized accrediting agency that is valid for more than five years must be supplemented with an interim report from the accrediting agency which should be submitted to the Agency by the accrediting agency or the school during the last year of its five-year approval. This interim report must provide such information as is necessary to assure the State Board that the school is meeting the approval standards. If such proof of compliance with approval standards cannot be shown, then the school must undergo the approval process. A school accredited by a state or regional agency recognized by the State Board school shall notify the Agency within five days of a change to its accreditation.~~

#### **Section 2225. Length of Approval**

The Board may grant initial approval for not more than two years, and renewal of approval for not more than five years.

## **Tuition from Public Funds.**

### **2225.1 Tuition for Independent Schools in Vermont.**

Tuition shall not be paid from public funds to any independent elementary or secondary school in Vermont unless the school satisfies the requirements in SBE Rule 2226 (Application), SBE Rule 2227 (Approval), and SBE Rule 2229 (Approval to Receive Public Tuition, Special Education Tuition). Notwithstanding this prohibition, tuition may be paid from public funds in cases where:

(a) There is an order from a court or from a due process hearing pursuant to SBE Rule 2365.1.6 requiring such payment, or

(b) The Secretary has approved an exception for a placement in an independent school pursuant to SBE Rule 2230.1.

### **2225.2 Tuition for Out of State Schools**

Tuition to be paid to an independent school in another state shall be made in accordance with 16 V.S.A. § 828.

## **Section 2226. Termination; Procedures for Revoking or Suspending Approval**

### **2226.1. Termination**

Approval of an independent school that fails to complete a timely application for reapproval shall terminate on the date specified in the most recent approval action, provided that the school received notification of the expiration of the approval period required in Section 2224.7 (Reapplication).

### **2226.2. Complaints; Investigations; Due Process Hearings**

#### **2226.2.1. Complaints**

(a) Complaints against an approved school must be made in writing to the Secretary. The complaint must contain enough detail to show that the school substantially failed to comply with the minimum course of study required, failed to maintain resources required to meet its stated objectives, or failed to comply with statutory requirements or the Board's rules for approved schools.

(b) Reports of drug or alcohol use shall be referred to the state's attorney for the county in which the school is located. Reports of child abuse or neglect shall be reported to the Department for Children and Families. Reports concerning the safety of facilities, water supply, electricity, plumbing, or waste disposal systems shall be referred to the appropriate agency.

#### **2226.2.2. Investigations; Due Process Hearing**

(a) The Secretary shall conduct an initial investigation of reports or complaints related to the requirements of this rule and laws that apply to approved schools and in cases of noncompliance with the annual compliance assurance requirement set forth in Subsection 2223.4 (Annual Compliance Assurance). The school shall receive notification of the complaint and investigation unless contraindicated by the particular facts. If, following an initial investigation, the Secretary finds a violation of rules or laws that apply to approved schools, the Secretary should first determine whether the matter can be resolved through informal means, such as by provision of regulatory guidance, and confirm that corrective action is taken by the school.



(b) If the Secretary determines that informal means are not appropriate to the violation or if the matter has not been resolved informally, the Secretary may place the approved school on probation and notify the Board of this action. An approved school may appeal the imposition of probation to the Board by requesting a hearing as provided in Subsection 2226.3 (Revocation or Suspension of Approval).

(c) At any time, the Secretary may conduct a formal investigation without first attempting an informal resolution or imposing probation.

(d) If the Secretary determines that a formal investigation is warranted, the Secretary shall appoint a review team of at least two persons that, with the consent of the school, shall include a member of the Council of Independent Schools. The team shall conduct a school visit and shall obtain from the school such information or documentation necessary to perform its assessment. The review team will inform the Secretary and the school of that results of its visit and assessment. Secretary shall share the findings with the Council of Independent Schools. The Council shall consider the findings from the investigation and the Secretary's proposed resolution and issue a written opinion that shall include minority opinions, if applicable, on the same.

(e) If, after receiving the Council's opinion, the Secretary determines that revocation or suspension of approval is warranted, the Secretary shall notify the Board of the recommendation and provide notice to the school. The Board shall hold a hearing pursuant to 3 V.S.A. chapter 25 to consider the Secretary's recommendation.

(f) If the Secretary reasonably believes that an approved school lacks the financial capacity to meet its stated objectives during the period of its approved status, including by means of self-report any of the financial events listed in 2223.3.2(b) (Financial Capacity, Solvency, and Stability), the Secretary shall so notify the school in writing and shall provide the school a reasonable opportunity to respond. If the Secretary does not find that the school has satisfactorily responded or demonstrated its financial capacity, a formal investigation may be initiated in accordance with (d) above, pursuant to 16 V.S.A. §166(b)(8).

(g) The Secretary shall maintain a register of all complaints that result in imposition of probation or a formal investigation, which shall be a public record, and which shall include the general nature of the complaint and action taken by the Secretary.

### **2226.3. Revocation or Suspension of Approval**

(a) After providing an opportunity for hearing pursuant to Subsection 2226.2.2 (Investigations; Due Process Hearing) above, the Board may revoke, suspend, or impose conditions on the status of an approved school, including its ability to receive public funds for:

1. failure to demonstrate that the school has the resources required to meet its stated objectives;

2. failure to comply with a statutory requirement or the Board's rules for approved schools, including failure to submit an annual compliance assurance;

3. failure to report any of the financial events listed in 2223.3.2(b) (Financial Capacity, Solvency, and Stability); or

4. failure to make an annual enrollment report to the Secretary as required by 16 V.S.A. § 166(b)(4).

(b) In considering whether an independent school lacks financial capacity to meet its stated objectives during the period of its approved status and what actions to take, the Board may consult with, and draw on the analytical resources of, the Vermont Department of Financial Regulation.

~~**Application for Approved Independent Schools and Approved Independent Schools Ineligible to Receive Public Funds.**~~

~~An application for initial approval or renewal of approval shall contain the following:~~

~~**2226.1** The name and address of the school.~~

~~**2226.2** A statement of the school's philosophy and purpose.~~

~~**2226.3** A description of the school enrollment including a statement of how it is designed to serve children with disabilities.~~

~~**2226.4** A description of the plan of organization for the school including its governance, faculty, and student body, and the names and addresses of the governing board.~~

~~**2226.5** A description of the curriculum, methods of instruction, evaluation procedures and special services that the school has designed to achieve its educational objectives and to provide a minimum course of study as defined in 16 V.S.A. § 906.~~

~~**2226.6** Demonstration that the school substantially complies with all statutory requirements for approved independent schools, with documentation of the following:~~

~~(1) A statement of nondiscrimination, posted on the school's website and included in the school's application materials, that is consistent with the Vermont Public Accommodations Act, Title 9 Vermont Statutes Annotated, Chapter 139 and the Vermont Fair Employment Practices Act, Title 21 Vermont Statutes Annotated, Chapter 5, Subchapter 6.~~

~~(2) An assurance, signed by the Head of School, that the school complies with the Vermont Public Accommodations Act in all aspects of the school's admissions and operations.~~

~~(3) A description of physical facilities including plant, materials, and equipment and assurances that the facilities meet all applicable State and federal requirements.~~

~~**2226.7** Evidence of compliance with local, State, and federal requirements pertaining to the health and safety of students.~~

**2226.8** Statements regarding professional staff including:

**2226.8.1** Professional Staff qualifications.

- (1) A job description for each position or a statement describing training, experience, and degree(s) required for each position.
- (2) A resume, vita, or description of appropriate qualifications for each current staff member.
- (3) Current assignment of each professional staff member.

**2226.8.2** Professional Staff Development.

- (1) A general statement of the institution's expectations for professional growth of staff.
- (2) A statement describing the school's inservice training and financial and other support given to staff for professional development.
- (3) A description of professional development in the prior two years.

**2226.8.3** Professional Environment.

- (1) A list of staff and length of service.
- (2) A description of staff meetings.
- (3) A description of other staff duties that are not related to teaching or administration duties.

**2226.9** Evidence of financial capacity, which may be shown by one of the following:

- (1) An audit letter by a certified accounting firm from the present or prior year describing financial capacity;
- (2) A notarized letter summarizing the financial status within the present or prior fiscal year signed by the board of directors or governing body;
- (3) An audit from the present or prior fiscal year performed by a certified accounting firm; or
- (4) A statement of financial capacity of a private, state, or regional agency recognized by the State Board for accrediting purposes concerning the school's financial capacity.

**2226.10** The school calendar.

**2226.11** Copies of publications for distribution to applicants for admission including the statement required by 16 V.S.A. § 166.(b)(3).

**Section 2227. Recognized Accrediting Agencies**

(a) The Board shall recognize accrediting agencies that meet the following requirements:

1. operate continuously for at least five years prior to applying for recognition under this section;
2. maintain membership in a peer organization that supports accrediting agencies in continuous improvement and alignment with best practices in school accreditation;
3. use a peer review process that includes evaluation by leaders of similar school;
4. appropriately train all staff and peer reviewers who are involved in the accreditation process;

5. accredit schools based on publicly accessible documented standards, including mission, governance, finance, program, community of the school, administration, development, admissions, personnel, general health and safety, child and student protection and well-being, facilities, student services, school culture, and residential life (where applicable);

6. perform a comprehensive onsite visit of any school seeking accreditation while such school is in session;

7. require that schools seeking accreditation to have curriculum that is informed by research, document individual student progress, and have mechanisms for monitoring, assessing, and providing feedback on student progress;

8. require that schools seeking accreditation promote an equitable, just, and inclusive community of adults and students, foster a culture of learning, and inspire students to respect and value diversity in its many forms;

9. conduct ongoing and periodic reviews as necessary throughout the accreditation cycle of the schools that it accredits and provide interim reports during the accredited school's approval period that are sufficient to meet the informational needs of the Board;

10. demonstrate substantial understanding and familiarity with state laws, policies, and regulations that apply to approved schools in Vermont; and

11. agree to review and share evidence of practices and compliance with state-specific requirements, if requested by the Agency, during the initial or interim stages of an approved school's accreditation period, except that the Agency shall retain the responsibility to review and determine compliance with nondiscrimination provisions of these rules.

(b) The Board shall create a publicly available list of currently recognized accrediting agencies that meet the criteria described in subsection (a) above. Any agency seeking to be recognized by the Board under this section shall submit a letter and supporting evidence to the Board detailing the ways in which it meets each criterion. Each applicant agency shall also provide their methodology for assessing and supporting schools in meeting and advancing diversity, equity, inclusion, and other nondiscriminatory practices. Upon review of each submission, the Board shall determine whether it will recognize the accrediting agency and set the length of time that such recognition will be in effect. The Board may impose additional conditions upon a recognized accrediting agency as it deems appropriate. Applicant agencies shall be notified of a decision and any conditions of continued recognition in writing. The Board may remove any agency from the list of recognized accrediting agencies at any time, after finding that the agency no longer meets one or more of the criterion listed below.

(c) The Board shall continue to recognize accrediting agencies listed in Rule 7320 until July 1, 2024.

#### **~~Approval of Application.~~**

The Board shall approve an independent school that offers elementary or secondary education if it finds, after opportunity for hearing, that the school provides a minimum course of study pursuant to 16 V.S.A. § 906 and that it substantially complies with the Board's rules for approved independent schools.

In order to be approved, an independent school that operates a boarding program, enrolls students as boarding students, or operates a residential treatment program shall be accredited by a state or regional agency recognized by the State Board for accrediting purposes or shall be licensed as a residential child care facility by the Department for Children and Families. This requirement does not apply to an independent school that enrolls only day students.

The Board shall make the following findings prior to approval:

**2227.1** The description of the school in the approval application is accurate.

**2227.2** The course of study offered is adequate to meet the educational purposes of the school and to provide a minimum course of study that is age and ability appropriate.

**2227.3** The school has available support services necessary to meet the requirements of a minimum course of study and its educational purposes, including library services, administrative services, guidance and counseling services, and a system of records by which student progress may be assessed.

**2227.4** The school has classroom, laboratory, library, and other facilities necessary to operate its program.

**2227.5** The school employs professional staff who are qualified by training and experience in the areas in which they are assigned as measured by the following:

**2227.5.1** For teachers, a minimum of a bachelor's degree in their field of instruction or substantially equivalent time in training and experience in their field of instruction.

**2227.5.2** For all professional staff, relevant experience and/or training in other programs not related to teaching or administrative duties to which they are assigned.

**2227.6** The school has an adequate program of continuing professional staff development as demonstrated in the application.

**2227.7** The school employs a sufficient number of professional staff for the population served. **2227.8** The school substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools including nondiscrimination in admissions and operations and requirements relative to its facilities, fire drills, and the immunization of its students against disease.

**2227.9** The school maintains a register of the daily attendance of each of its enrolled students.

**2227.10** The school maintains an operating schedule that includes a total number of instructional hours each year that is not less than that required of a public school serving the same grades.

~~2227.11~~ The school has the financial capacity to carry out its stated objectives for the period of approval. For purposes of these rules, "financial capacity" means that anticipated revenue and funds on hand are sufficient to meet a school's stated objectives.

~~2227.12~~ The school complies with the requirements of 16 V.S.A. § 255, relating to criminal record checks and checks of the Child Protection Registry and the Vulnerable Adult Abuse, Neglect, and Exploitation Registry.

~~2227.13~~ The school complies with legal requirements concerning nondiscriminatory school branding.

~~2227.14~~ The school has adopted a policy on record maintenance and retention that, at minimum, provides for the timely and confidential disposition of student records in the event of the school's closure.

## **Section 2228. Length of Approval.**

### **Tuition from Public Funds**

#### **2228.1. Tuition for Approved Schools in Vermont**

Tuition shall not be paid from public funds to any independent elementary or secondary school in Vermont unless the school satisfies the requirements in Section 2223 (Requirements to Operate an Approved Independent School or Approved Independent School Ineligible to Receive Public Tuition) and Section 2224 (Application and Reapplication for Approval; Approval Process), as well as Section 2229 (Approval to Receive Public Tuition, Special Education Tuition). Notwithstanding this prohibition, tuition may be paid from public funds in cases where:

(a) There is an order from a court or from a due process hearing pursuant to Subsection 2365.1.6 (Due Process Complaint Procedures) requiring such payment; or

(b) The Secretary has approved an exception for a placement in an independent school pursuant to Subsection 2230.1 (Exceptional Circumstances – Approval Process).

#### **2228.2. Tuition for Out-of-State Schools**

Tuition to be paid to an independent school located out of state shall be made in accordance with 16 V.S.A. § 828.

~~The State Board may grant initial approval for not more than two years, and renewal of approval for not more than five years.~~

## **Section 2229. Approval to Receive Public Tuition; Special Education Approval.**

### **2229.1. Enrollment: Requirements for Approved Independent Schools, Students, and LEAs.**

(a) Each approved independent school shall publish, maintain and follow a written enrollment policy which, at minimum, shall provide the following:

1.) That the student or the parent of a student seeking to attend the approved independent school shall voluntarily submit an application;

2.) Any special considerations or requirements for a student's acceptance for enrollment, none of which shall disadvantage a student based on the student's membership in a protected class, the student's actual or suspected disability, or the student's socioeconomic status;

3.) The school's process for making enrollment decisions when the number of applicants exceeds capacity;

4.) That a student shall be accepted for enrollment in a non-discriminatory manner and consistent with the school's written enrollment policy. No student shall be denied acceptance for enrollment if the reason for denial is that the student is disabled as defined in section 504 of the Rehabilitation Act of 1973 as amended or that the student is eligible for special education or undergoing the comprehensive evaluation process for special education. No student shall be denied acceptance for enrollment on the basis of the student's race, gender, color, creed, national origin, marital status, sexual orientation, gender identity or disability, or any other reason set forth in state or federal non-discrimination requirements. ~~race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity or any other classification protected by federal or State law.~~

(b) Upon the student's acceptance for enrollment, the student's IEP team shall meet to determine how the student's services shall be provided. The approved independent school and the LEA shall follow the procedures in 2229.4 (Procedures for Ensuring the Provision of Special Education Services to Publicly Funded Students in Approved Independent Schools), after which the student shall be enrolled in the approved independent school or, upon the decision of the hearing officer in SubsectionRule 2229.4(f), below, the IEP team shall consider an alternative enrollment for the student.

(c) When a publicly funded student seeks to attend an approved independent school after the start of the school year, upon the student's acceptance for enrollment, the student shall be provisionally enrolled consistent with the procedures in Subsection Rule 2229.4, during which time the LEA of residence shall agree to pay tuition on the student's behalf until the procedures in 2229.4 have been completed and the student is enrolled, or until the hearing officer issues a decision pursuant to ~~subsection~~ SubsectionRule 2229.4(f), below.

(d) This SubsectionRule, 2229.1, shall not apply to a therapeutic independent school.

### **2229.2 Staffing.**

An approved independent school is not required to demonstrate that it has the resources to serve every category of special education as defined under Board rules in order to be approved or retain its approval to receive public funding for general tuition. Therapeutic independent schools shall have the capacity to serve the needs of students they are designed to serve.

The Secretary shall establish minimum standards of services for students receiving special education services in independent schools in Vermont.

### **2229.3 Assurances.**

The approved independent school shall demonstrate that it has the ability to serve all students with disabilities by:

(a) Demonstrating an understanding of special education requirements, including:

~~1.(1)~~ Provision of a free and appropriate public education in accordance with federal and ~~s~~State law~~.~~

~~2.(2)~~ Provision of education in the least restrictive environment in accordance with federal and ~~s~~State law~~.~~

~~3.(3)~~ Characteristics and educational needs associated with any of the categories of disability or suspected disability under federal and ~~s~~State law, ~~and~~.

~~4.(4)~~ Procedural safeguards and parental rights, including discipline procedures, specified in federal and ~~s~~State law~~.~~

(b) Committing to implementing the IEP of an enrolled student with special education needs, providing the required services, and appropriately documenting the services and the student's progress~~.~~

(c) Employing or contracting with staff who have the required licensure to provide special education services~~.~~

(d) Agreeing to communicate with the responsible LEA concerning:

(1) Development of, and any changes to, the IEP~~.~~

(2) Services provided under the IEP and recommendations for a change in the services provided~~.~~

(3) The student's progress~~.~~

(4) Maintenance of the student's enrollment in the independent school, ~~and~~.

(5) Identification of students with suspected disabilities~~.~~

(e) Committing to participate in dispute resolution as provided under federal and ~~s~~State law.

#### **2229.4 Procedure for Ensuring the Provision of Special Education Services to Publicly Funded Students in Approved Independent Schools**

(a) Upon the acceptance for enrollment of a student with an individualized education program in an approved independent school, the LEA of the student's residence shall convene an IEP or 504 team meeting within 30 days. When practical, the meeting shall be held prior to the start of the academic year



in which the student is enrolled. The approved independent school shall designate personnel to participate in the IEP or 504 meeting. At the meeting, the team, which includes the parent, and the student where appropriate, shall determine how to ensure the provision of a free and appropriate public education in accordance with the student's IEP.

~~(b)~~ The LEA and the approved independent school together with the student's IEP team shall work collaboratively to ensure the student's services are provided in accordance with ~~s~~State and federal law. Services shall be provided in a timely manner, beginning with the first day of the school year when possible. It is the intent of the ~~State~~-Board that the LEA and the approved independent school will identify solutions that minimize the loss of instructional hours to the student. The Agency shall provide technical assistance to the LEA and the approved independent school upon request.

~~(c)~~ For placement purposes under the IDEA, the IEP team shall ensure the IEP process reflects the student's choice of enrollment in the approved independent school, notwithstanding ~~SBE~~ ~~Rule~~~~Subsection~~ 2364.3(a)(2) ~~(Placements)~~. In this context, "placement" refers not to the specific site of the educational placement, but to the provision of special education and related services.

~~(d)~~ The student's special education and related services shall be provided in the least restrictive environment.

~~(e)~~ To ensure the provision of services in the student's IEP, the approved independent school and the LEA may use any or all of the methods listed below to ensure the provision of those services, including:

1. The approved independent school recruiting and hiring special education or other professional or paraprofessional staff;
2. The approved independent school contracting directly with service providers to provide the services at the independent school if the services are not otherwise available at the independent school;~~;~~
3. The approved independent school contracting with the LEA to provide the services; ~~and~~;
4. The LEA providing the services at a public school operated by the LEA or another public school.

~~(f)~~ If there is a dispute between the LEA and the approved independent school over whether the student's special education services can be provided in accordance with the student's IEP at the independent school or otherwise, the LEA shall initiate a hearing before an independent hearing officer, the costs of which shall be borne equally between the LEA and the independent school, within 30 days of the impasse.

~~(g)~~ If the hearing officer determines the approved independent school is unable to provide the required IEP services due to an inability to retain qualified staff, the LEA shall immediately convene an IEP meeting to consider alternatives.

1. The approved independent school shall not be subject to any disciplinary action or revocation of its approval by the Board under Subsection Rule 2226.3.28 (Revocation or Suspension of Approval) due to its failure to enroll or continue to enroll the student.

~~(h)~~ This Subsection Rule, 2229.4, shall not apply to a therapeutic independent school.

#### **2229.5. Out-of-State Programs.**

(a) ~~Subject to the provisions of 16 V.S.A §828 Unless otherwise determined by the Board~~, in order for an out-of-state independent school to be approved to receive public funds for special education purposes by the Board, the school shall be approved under the rules of its jurisdiction by the host state for the purpose of providing special education and related services to children with disabilities within its jurisdiction within that state. Any limitation by the jurisdiction the host state on an independent school's special education approval, such as by category of disability served, or other comparable standard, shall also apply to the school's special education approval in Vermont.

(b) Rates paid for tuition, room, and board for students receiving special education in out-of-state schools shall not exceed the allowable costs approved by the authorized body in the state where the school is located, except in exceptional circumstances approved by the Secretary.

#### **2229.6. Approval Procedures to Receive Public Funds.**

(a) Application for public funds approval shall be made at the time of application under Section BE Rule 2224 (Application and Reapplication for Approval; Approval Process) 3 et seq. A ~~n independent~~ school that has already obtained ~~independent school~~ approval from the Board may at any time submit an application for public tuition approval to the Secretary.

~~(b) Application for special education funding approval shall be submitted in writing to the Secretary in accordance with the format prescribed by the Secretary.~~

~~(be)~~ The procedures for public tuition approval shall be the same as those for approval in accordance with ~~SBE Rule 2223 et seq~~ Subsection 2224 (Application and Reapplication for Approval; Approval Process). To the extent possible, these procedures shall occur simultaneously.

#### **2229.7. Duty to Notify Notification.**

After receiving approval for public tuition, an approved independent school shall notify the Secretary within a reasonable time of any significant changes to its special education program, professional staff, governance, financial capacity, or facilities. The Secretary may, upon such notification, gather additional information from the school, including by means of a site visit. As a result, the Secretary may ~~return to recommend~~ the Board ~~for a change in~~ the school's approval for public tuition purposes. The Secretary shall employ the same procedures described in Subsection 2226.2.2 (Investigation; Due Process Hearing) to recommend a change to a school's approval status. The Board shall provide a hearing on the matter in accordance with Subsection 2226.2.2 and the requirements of Sections 1230, et seq.

~~If the Secretary petitions the Board under Rule 2223.8 for a change to a school's approval status, the Council of Independent Schools and the subject independent school shall be notified and have an opportunity to be heard~~

~~by the Board. If the school disagrees with the proposed change to its approval status, the Board shall hear the matter in accordance with the requirements of SBE Rule 1230, et seq.~~

**2229.8. Minimum Level of Service-**

Approved independent schools shall be deemed to offer a minimum standard of service to a child, as required by 16 V.S.A. § 2973., if those services are offered according to a written agreement with the sending responsible agency, as required by ~~Section~~SBE Rule 2231 ~~(Written Agreements Required)~~.

**Section 2230. Placement Prohibition-**

No responsible agency, as defined by ~~SBE Rule~~Subsection 2360.3 ~~(Child Find)~~, or LEA shall make a special education placement in an independent school that has not been approved to receive public tuition pursuant to the conditions in Rule 2229 ~~(Approval to Receive Public Tuition; Special Education Approval)~~, unless the placement is pursuant to:

- (a) ~~Subsection~~ Rule 2230.1 ~~(Exceptional Circumstances – Approval Process)~~;
- (b) A court order; or
- (c) A hearing officer's order.

**2230.1 Exceptional Circumstances - Approval Process.**

Upon application by a responsible LEA, the Secretary may permit, in exceptional circumstances, a special education placement in an ~~independent~~ school that is approved pursuant to ~~SBE Rule 2223~~section 2224 ~~(Application and Reapplication for Approval; Approval Process)~~, ~~et seq.~~ but that has not been approved to receive public tuition under ~~Section~~Rule 2229 ~~(Approval to Receive Public Tuition; Special Education Approval)~~. In instances in which the Secretary grants such approval, tuition and associated otherwise allowable costs shall be reimbursable under subchapter 2 of Chapter 101 of Title 16 of the Vermont Statutes Annotated. Any person aggrieved by the Secretary's decision may file an appeal with the ~~State~~Board pursuant to 16 V.S.A. § 828.

- (a) Exceptional circumstances exist when:
  - (1) After reasonable efforts, the LEA cannot locate an appropriate public or independent school approved for special education purposes pursuant to ~~Section~~SBE Rule 2229 to serve children with the category of disability under which the child was determined to be eligible for special education; and
  - (2) The proposed placement is deemed appropriate by the child's IEP team.
- (b) The Secretary may specify conditions under which the placement is to be carried out.

**Section 2231. Written Agreements Required**

~~2231.1. Agreement as to Costs-~~

(a) In order to obtain approval to receive public tuition, an ~~approved independent~~ school shall assure the State Board that, prior to enrolling a child pursuant to ~~Subsection Rule~~ 2229.1 (~~Enrollment: Requirements for Approved Independent Schools, Students, and LEAs~~), the school will enter into a written agreement with the LEA committing to the requirements set forth in ~~Subsection BE Rule~~ 2229.3 (~~Assurances~~) and ensuring that qualified school personnel will attend planning and all IEP meetings for the student. The agreement shall outline tuition, room, board, and other costs associated with the child's attendance. For children on an IEP who are placed by a state agency or a designated community mental health agency, or any other agency defined by the Secretary, in accordance with 16 V.S.A. § 2948., the agreement shall be with the Secretary. In the instance of an emergency placement, such provisions shall be agreed upon within 30 days of the child's enrollment.

(b) The Secretary shall consult with independent schools in the State and determine maximum rates for tuition, and room and board for residential placements. These rates shall be published each year by November 30. Any amount charged by an approved independent school for tuition shall not exceed the school's actual or anticipated costs of providing special education services to the student and shall not exceed the maximum rates set by the Secretary, provided that the Secretary may permit charges in excess of the maximum rates if the Secretary deems it warranted.

(c) An approved independent school that enrolls a student with an IEP pursuant to ~~Subsection Rule~~ 2229.1 may bill the responsible LEA for the excess special education costs beyond those covered by general tuition. Reimbursement of the excess costs shall be based on the direct-cost rates approved by the Secretary for services actually provided to the student consistent with the Agency of Education Technical Manual for special education cost accounting.

(d) An approved independent school that enrolls a student under ~~SBE Rule Subsection~~ 2229.1 shall provide documentation to the Secretary in order to ensure that the amounts charged are reasonable in relation to special education services provided by the school.

#### **2231.2. Agreement as to Non-Instructional Services-**

In order to obtain approval to receive public tuition, an independent school shall assure the Board that, within thirty days of enrolling a child with an IEP, the school will enter into a written agreement with the sending LEA or other responsible agency as to the division of responsibility for performance of non- instructional services, including compliance with special education procedural requirements. For children placed by a state agency or a designated community mental health agency, or another agency defined by the Secretary, this agreement shall be with the LEA that has educational planning responsibility for the child.

#### **Section 2232. Rate Approval for Therapeutic Approved Independent Schools-**

(a) The Secretary shall set, after consultation with independent schools, the maximum tuition rate to be paid by the Agency and supervisory unions or school districts to therapeutic independent schools. The rate for each therapeutic independent school shall be no more than the costs that are reasonably related to the level of services provided by the school.

(b) If a therapeutic independent school does not submit an application for rate approval by November 15, the most recent approved rate will be in effect for the following school year. The Secretary may

review an approved rate at any time. An approved rate may be reviewed at any time on request of the school based on extraordinary circumstances. Therapeutic schools will supply information as requested by the Secretary.

(c) A therapeutic school's most recently approved rate shall be adjusted annually by the Secretary according to the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis. The Secretary shall announce the inflation rate to allow for sufficient time for submission of an application for approval of a new rate under subsection (d) in the event the therapeutic school determines such an application is needed. The annually-inflated rate shall become the most recently approved rate.

(d) A therapeutic school requesting a new rate shall submit an application for approval of a new rate to the Secretary by November 15 for tuition, related services, room, and board based upon the actual or anticipated costs that are reasonably related to providing educational services. Schools that also receive rates from the Agency of Human Services shall submit an application for approval of a new rate to the Secretary by May 1. Reported costs shall be only those that are net of other available restricted revenue sources. To demonstrate that the rate requested by the therapeutic school meets this standard, the therapeutic school shall submit to the Secretary the following:

~~(1.)~~ Costs for each of the following categories, reported at the general ledger account description level, submitted in accordance with the Generally Accepted Accounting Principles published by the Financial Accounting Standards Board:

- (A) Salaries for all employees and full-time equivalents as applicable
- (B) Program-related Contractual Services
- (C) Operations-related Contractual Services
- (D) General Operating
- (E) Program
- (F) Travel/Transportation
- (G) Building - Direct
- (H) Building - Allocated
- (I) Admin I - Allocated
- (J) Admin II - Allocated

(K) Fringe - Allocated

~~{2.}~~ The school's proposed operational capacity, which shall be supported by a narrative that describes how the proposal reflects relevant circumstances including three-year historic enrollment, student acuity or changes in student acuity, availability of faculty and staff, physical space, anticipated demand for placements or change in anticipated demand for placements, and other considerations.

(e) A therapeutic school submitting an application for rate approval for the first time may submit the application at any time pursuant to this subsection.

(f) If the Secretary determines an application for new rate approval submitted under subsection (d) is incomplete, then the therapeutic school shall have 10 working days to complete the application following notice that its application is incomplete.

(g) The Secretary shall evaluate each element of the application for new rate approval submitted pursuant to subsection (d) and determine whether the school has demonstrated that the cost associated with each element is reasonably related to the level of services provided by the school. In determining whether a cost is reasonably related to the level of services, the Secretary will consider the following: direct-cost rates approved by the Secretary pursuant to 16 V.S.A. § 2973.(b), costs approved for other therapeutic schools, regional differences in costs, demonstrated difficulty filling certified or licensed positions, tenure of faculty and staff, student acuity, educational model, students' need for stability in educational placement, and other aspects of program and student need documented in the application. Prior to conducting cost comparisons with applicant data, the Secretary shall:

~~{1.}~~ Establish standards for developing and applying a database of comparable information to be utilized in rate determinations, and publish the standards on the Agency's website;~~;~~

~~{2.}~~ Annually update the database of comparable information; ~~and-~~

~~{3.}~~ Implement a procedure to document and retain the process and basis for each determination, including the comparable data applied.

(h) The Secretary shall determine the rate on a per-student basis by dividing the total costs determined in subsection (g) by the school's approved operational capacity, which shall be determined by the Secretary from the information provided in subsection (d)(2).

(i) The Secretary shall notify a therapeutic school that has submitted an application for new rate approval pursuant to subsection (d) of the final rate approval by January 15.

(j) After the Secretary approves a rate for a therapeutic school, the school shall not exceed that rate until such time as a new tuition rate is approved by the Secretary. In the case of a service required by a student's IEP that is not included within the school's approved rate, the LEA shall decide whether to

contract for the service with the therapeutic school. The LEA shall provide notice of its decision to the Secretary within 5 days.

(k) A therapeutic school that is not satisfied with the final rate may request reconsideration by the Secretary. Requests for reconsideration shall be made in writing to the Secretary within 30 days of the final rate approval. Upon receiving the Secretary's answer regarding reconsideration, if the therapeutic school is not satisfied, it may file an appeal with the ~~State~~ Board in accordance with the requirements of ~~SBE Rule~~Section 1230, et seq. Alternatively, a therapeutic school may appeal to the ~~State~~ Board pursuant to ~~Section~~~~BE Rule~~ 1230, et seq. without first seeking reconsideration by the Secretary. The ~~State~~ Board's determination of the appeal shall be final.

### **Section 2233. Standards and Regulations-**

The ~~State~~ Board shall afford the opportunity for approved independent schools to participate in the development and revision of State standards that apply to independent schools.

### **Corrections Programs**

#### **Section 2234. Corrections Education Program**

The Secretary shall conduct a review of the Corrections Education Program in accordance with the procedures and standards contained within ~~SBE Rule~~Subsections 2220 through 2229.

### **Tutorial Programs**

#### **Section 2235. Approval of Tutorial Programs**

Statutory authority: 16 V.S.A. § 828.

##### **2235.1. Definitions**

"Tutorial program" means education provided to a student who is placed in a short-term program that is not administered by an LEA. The purpose of the program is to provide evaluation and/or treatment. This does not include home based tutorials, programs operated by a public school or collaborative, or a program of an independent school that has been approved under 16 V.S.A. § 166. The average length of stay for children in a tutorial program shall be not more than six months. The Secretary may waive the average length of stay time period for individual programs, based upon needs of the children served by the program.

##### **2235.2. Procedures for Approval**

###### **2235.2.1. Application**

An application for approval or renewal of approval as a tutorial program shall include the following:

- (a) Name, address, telephone number of the tutorial program.
- (b) Name of the Chief Executive Officer or contact person.
- (c) A statement of the tutorial program's purpose and objectives.

(d) A description of the tutorial program's enrollment, including a statement of whom it is designed to serve.

(e) A description of the plan of organization for the tutorial program.

(f) A tutorial program calendar.

#### **2235.2.2. Review**

Upon receipt of an application for approval, the Secretary shall appoint a committee of at least two persons to review the application and visit the tutorial program.

#### **2235.2.3. Report to the Secretary**

The appointed committee shall present a written recommendation regarding possible approval to the Secretary. A copy of the recommendation shall be sent to the tutorial program. The applicant shall be given at least 30 days to respond before a recommendation regarding approval or disapproval is made by the Secretary to the State Board.

#### **2235.2.4. Board Action**

The Secretary shall recommend approval or disapproval for action by the State Board at its next regular meeting. Officials of the tutorial program shall be notified of this meeting date.

#### **2235.2.5. Term of Approval**

The State Board may grant approval for a term of not more than two years. The tutorial program shall be approved prior to receiving tuition payments from a public LEA.

#### **2235.2.6. Renewal**

Not less than three months prior to expiration of a tutorial program's approval, the Secretary shall send an application packet and a letter notifying the program when a site visit will occur. The completed application shall be received from the tutorial program not later than 30 days prior to the scheduled site visit.

#### **2235.2.7. Denial, Revocation, or Suspension of Approval**

Prior to recommending denial, revocation, or suspension of approval to the State Board, the Secretary shall notify the tutorial program of the reasons for the proposed action and shall afford the tutorial program an opportunity to be heard by the Board. Approval of a tutorial program shall be revoked or suspended by the Board based on a finding that the tutorial program no longer meets the criteria for approval.

#### **2235.2.8. Standards and Regulations**

The State Board shall afford the opportunity for approved tutorial programs to participate in the development and revision of State standards that apply to tutorial programs.

#### **2235.3. Criteria for Approval**

In order for a tutorial program to obtain approval or renewal of approval from the State Board, the program shall meet both the general and special education requirements in the following areas:



- (a) The instruction and methods of instruction offered are age and ability appropriate for the child, and are coordinated with the child's responsible LEA as set forth in subsection (j) below.
- (b) The tutorial program has sufficient facilities and materials or access to other facilities and additional materials as necessary to provide an appropriate education.
- (c) The tutorial program's facilities and operation comply with local, State, and federal requirements pertaining to the health and safety of children.
- (d) The tutorial program employs an adequate number of professional staff for the population served and these staff members are qualified by training and experience in the areas to which they are assigned.
- (e) Teachers providing or supervising the provision of special education have licensure and endorsement as would be required for the equivalent work in a Vermont public school.
- (f) All professional staff have relevant experience and/or training in the duties to which they are assigned.
- (g) The tutorial program maintains a register of the daily attendance of each of its students and reports the attendance to the responsible LEA.
- (h) The tutorial program maintains an operating schedule that includes instruction for no less than ten hours per week unless inconsistent with medical and/or educational recommendations. The operating schedule shall be sufficient to ensure that the instructional services address the individual needs of a child with disabilities and are consistent with the child's IEP.
- (i) The tutorial program has the financial capacity to carry out its educational purposes for the period of approval.
- (j) The tutorial program coordinates educational services with the responsible LEA, including credit for coursework for high school, and coordinates with other responsible agencies such as the Department for Children and Families, community mental health centers, and family-parent child centers by:
- (1) Contacting the responsible LEA(s) (see 16 V.S.A. § 1075.) in order to access school records and determine the special education status of the child.
  - (2) Reviewing the IEP, the child's needs, and the tutorial's own ability to implement the IEP.
  - (3) Making a formal referral for a special education evaluation to the responsible LEA, if when receiving a child, the child is suspected of having a disability.

(4) Maintaining educational records and disclosing them to the responsible LEA and the child's parents, unless restricted by statute, court order, or other legally binding document specifically revoking those rights.

(5) Participating in evaluation procedures and in the development of IEPs, including plans for reintegration and transition services.

(6) Implementing IEPs.

(7) Providing prior notice to the responsible LEA regarding the need for a change in a child's program or placement, including long-term suspension or expulsion.

(k) In order to obtain approval, a tutorial program shall meet special education standards that apply to state and local education agencies. This shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate, in at least each of the following areas:

(1) Admissions.

(2) Discipline.

(3) Significant change in placement.

#### **2235.4. Rate Approval for Non-Residential Tutorial Programs.**

(a) Each tutorial program shall annually report its rates for tuition, related services, and room and board, if applicable, to the Secretary on a form prescribed for that purpose.

(b) The rates that a tutorial program charges for tuition, related services, and room and board shall be reasonably related to the actual costs of the services provided. Reasonable relationship shall be determined by utilizing generally accepted accounting principles, such as those set forth in the Handbook (II) for Financial Accounting of Vermont School Systems.

(c) The Secretary shall review each tutorial program's annual rate report. If the Secretary concludes that a tutorial program's rates are not reasonably related to the services provided, the Secretary shall make a determination as to the maximum rate that public school districts and the Agency would pay to the tutorial program for those services and offer the tutorial program an opportunity for explanation regarding why the maximum rate the Agency would pay is not adequate. If the explanation is not satisfactory, the Secretary shall refer the matter to the State Board.

(1) Upon such referral by the Secretary, the State Board shall conduct a formal proceeding in accordance with the requirements of [SBE Rule Subsection 1230](#), et seq.

(2) The State Board's determination shall be final.

#### **Distance Learning Schools**

**Section 2236. Approval of Distance Learning Schools.**

**Section 2237. Statutory Authority.**

16 V.S.A. § 166.(b)(6).

**Section 2238. Definition.**

A "Distance Learning School" means an independent school that offers a program of elementary or secondary education through correspondence, electronic mail, satellite communication, or other means and that, because of its structure, does not meet some or all the rules of the State Board for approved independent schools and is ineligible to receive public tuition payments pursuant to 16 V.S.A. § 166-(b)(6).

**Section 2239. Procedures and Standards.**

The distance learning school shall meet the procedures and standards set forth in ~~Sections~~Rules 2220-2228 above that, because of its structure, can be applied, and the following rules:

- (a) The distance learning school's business and administrative offices are located in Vermont and are sufficient to meet the needs of the school.
- (b) The distance learning school follows Vermont requirements for incorporation pursuant to Titles 11, 11A, and 11B of the Vermont Statutes Annotated.
- (c) The distance learning school offers an educational program that is developed and assessed by staff who are other than the parents of the students and who are either employed by the school or under contract with the school.
- (d) The distance learning school has policies and procedures to:
  - (1) Enroll students who reasonably can be expected to benefit from the instruction offered by the program.
  - (2) Measure student progress to ensure that students continue to benefit from such instruction.
- (e) The distance learning school has policies and procedures to answer student and parent inquiries about programs and services promptly and satisfactorily and to answer specific student academic inquiries in a timely and beneficial way.
- (f) The distance learning school has policies and procedures for informing students and parents of academic progress on a regular basis.
- (g) Tuition:

(1) Tuition policies, including tuition collection practices, are written, clear, and provided to parents in advance of enrollment, including notification that the school shall not be eligible to receive tuition payments from school districts pursuant to 16 V.S.A. § 166.(b)(6).

(2) The distance learning school has clear written policies on refunds of tuition payments for circumstances in which students choose not to or are unable to complete the program of instruction.

(h) In the event that the school closes, the distance learning school has policies for:

(1) Tuition adjustment or refund.

(2) Preservation and release of student records.

## **Post-Secondary Schools**

### **Section 2240. Certification of Post-Secondary Schools.**

#### **2240.1. Definitions.**

(a) "Post-secondary school" means any person who offers or operates a program of college or professional education for credit or degree. Significant changes to an existing post-secondary school such as changing from an associate to an undergraduate degree program, or an undergraduate to a graduate degree program, or adding a new graduate degree program shall be considered the operation of a post-secondary school for the purposes of registration and certification.

(b) "A post-secondary school whose primary operation is in the State of Vermont" means a post-secondary school that offers the majority of its courses in an institution in Vermont or that maintains its principal administrative offices in Vermont and offers post-secondary courses in Vermont.

(c) "Confer a degree" and "degree-granting authority" means the act of conferring and the authority to confer a degree to a student who has completed the requisite coursework and other requirements in a post-secondary school doing business in Vermont. An out-of-state post-secondary school that offers more than seventy-five percent of its credit hours toward a degree in its Vermont affiliate must obtain a certificate of degree-granting authority in Vermont before it may confer or offer to confer a degree.

(d) "Business organization", for the purposes of 16 V.S.A. § 176-(d)(1), may include a corporation if the program of education is provided solely for the employees or invitees of the corporation.

### **Section 2241. Certification of Post-Secondary Schools Chartered in Vermont.**

#### **2241.1. Statutory Authority.**

16 V.S.A. § 176.

#### **2241.2 [Repealed].**

**2241.3. Application for Certificate of Approval-**

A person desiring a certificate of approval or certificate of degree-granting authority from the State Board shall file an application with the Secretary prior to offering post-secondary credit-bearing courses or programs and prior to admitting its first student. The application shall indicate the certification sought and shall include a description of the school that contains the following:

- (a) The name, location and legal nature of the school, including a copy of the articles of association or other documents descriptive of the legal nature of the school.
- (b) The credits or degree(s) that the school proposes to offer.
- (c) The time schedule by which the school intends to implement the program for which certification is sought.
- (d) The purpose and philosophy of education of the school.
- (e) The organization of the school, including a description of its governance, administration, and affiliation with other organizations for the provision of services or programs.
- (f) A description of the financial resources and policies of the school including its present and anticipated future assets, sources of funding and revenue, start-up costs for proposed programs, and operating budget. Assets and income and expenditures for the school's prior fiscal year shall be presented in an audited financial statement prepared by a certified public accountant.
- (g) The school's policy regarding refund of tuition and fees collected in advance from students.
- (h) A description of the school's physical plant, library, and equipment.
- (i) A description of academic programs, including their level, site, and length. The application shall set forth the minimum credit requirements, if any.
- (j) A statement regarding the school's professional staff, including its policies regarding appointment, promotion, tenure (if applicable), dismissal, the qualifications of professional staff, teaching and student loads, and the numbers of full-time and part-time and adjunct staff and their non-teaching responsibilities.
- (k) A description of the student body, including its size and level of education at admission, methods of recruitment, and available financial aid resources.
- (l) The official website address, a copy of all catalogues or brochures publicly distributed by the school, and a copy of advertisements sponsored by the school to recruit students or solicit funds.

(m) If the school is to offer credit or degree(s) through online delivery or by correspondence, a description of those activities and proof of relevant licensure.

(n) Evidence that each applicant for enrollment is notified, in writing, on an application, enrollment, or registration form to be signed by the applicant, that credits earned at the school are transferable only at the discretion of the receiving school.

## **Section 2242. Certification of Post-Secondary Schools Not Chartered in Vermont.**

### **2242.1. Statutory Authority.**

16 V.S.A. § 176-a.

### **2242.2. Application for Certificate of Approval.**

A person desiring a certificate of approval from the State Board shall file an application with the Secretary prior to admitting students. A person may file an application for a certificate of degree granting authority at any time but may not admit students without having received a certificate of approval and may not confer or offer to confer a degree without having received a certificate of degree granting authority unless exempt under ~~SBE Rule~~Subsection 2240.1, ~~subsection~~(c). The application shall include a description of the school that contains the following:

(a) The name, location, and legal nature of the school, including a copy of articles of association or other documents descriptive of the legal nature of the school.

(b) The credits or degree(s) that the school proposes to offer.

(c) The time schedule by which the school intends to implement the program for which certification is sought.

(d) The purpose and philosophy of education of the school.

(e) The organization of the school including a description of its governance, administration, and affiliation with other organizations for the provision of services or programs.

(f) A description of the financial resources of the school including its present and anticipated future assets, sources of funding and revenue, start-up costs for proposed programs, and operating budget. Assets and income and expenditures for the out-of-state school's prior fiscal year shall be presented in an audited financial statement prepared by a certified public accountant.

(g) The school's policy regarding refund of tuition and fees collected in advance from students.

(h) A description of the school's physical plant, library, and equipment.

(i) A description of academic programs, including their level, site, and length. The application shall set forth the minimum credit requirements, if any.

(j) A statement regarding the school's professional staff, including its policy regarding appointment, promotion, tenure, if applicable, dismissal, the qualifications of professional staff, teaching and student loads, and the numbers of full-time and part-time and adjunct staff and their non-teaching responsibilities.

(k) A description of the student body, including its size and level of education at admission, methods of recruitment, and available financial aid resources.

(l) A copy of all catalogues or brochures publicly distributed by the school and a copy of advertisements sponsored by the school to recruit students or solicit funds.

(m) If the school is to offer credits or degree(s) through online delivery or by correspondence, a description of those activities and proof of relevant licensure.

(n) Evidence that each applicant for enrollment is notified, in writing, on an application, enrollment, or registration form to be signed by the applicant, that credits earned at the school are transferable only at the discretion of the receiving school.

(o) A statement of commitment to offer the full program for students to complete the program in a reasonable length of time.

(p) Documentation of accreditation by any regional, national, or programmatic institutional accrediting agency recognized by the U.S. Department of Education.

### **2242.3. Registration.**

A post-secondary school seeking continued operation in Vermont after initial approval from the State Board shall register with the Agency within one-year of receiving approval from the State Board and annually thereafter on or before September 1. Registration shall be on a form prescribed by the Secretary.

### **Section 2243. Review Process for Post-Secondary Schools Chartered In and Outside Vermont.**

#### **2243.1. Review of Application for Certificate of Approval for Schools Chartered In and Outside Vermont.**

Upon receipt of an application for a certificate of approval, the Secretary shall appoint a review team of no fewer than two individuals. The Secretary shall appoint persons to the review team who possess general knowledge of post-secondary school standards and, where applicable, persons with specialized knowledge in any particular programs offered by the school. At least one of the persons so appointed shall be from a Vermont post-secondary school or representative organization. The team shall review the application and shall verify its contents by, if necessary, visiting the school. The team shall present a written recommendation regarding certification to the Secretary within 90 days of the receipt of the completed application unless a longer period is required and explained in writing to the applicant. A copy of the recommendation shall be provided at the same time to the applicant. The applicant shall be given 30 days to respond and, if requested, shall be afforded a hearing before the Secretary or his or her designee before a recommendation regarding certification is made by the Secretary to the State Board.

### **2243.2. Review of Application for Certificate of Degree Granting Authority.**

Upon receipt of an application for degree granting authority, which shall contain all the information required by an application for certification of approval and information documenting that the requirements of [SBE Rule Subsection 2243.6](#), subsection (a) are met, the Secretary shall contact the Vermont Higher Education Council, which shall review the application and determine the accuracy of its contents by, if necessary, visiting the school. The Secretary may also appoint independent reviewers to accompany representatives of the Vermont Higher Education Council reviewing the school. The Vermont Higher Education Council shall present written recommendations regarding certification to the Secretary within 90 days of the receipt of the completed application unless a longer period is required and explained in writing to the applicant. The independent reviewers, if appointed by the Secretary, may either join in the recommendations of the Vermont Higher Education Council or present independent recommendations. A copy of all recommendations shall be provided to the applicant at the same time they are provided to the Secretary. The applicant shall be given 30 days to respond to the recommendations and, if requested, shall be afforded a hearing before the Secretary or his or her designee before a recommendation regarding certification is made by the Secretary to the State Board. The State Board shall be provided with a copy of the recommendation of the Vermont Higher Education Council and, if applicable, a copy of the recommendations of the independent reviewers.

### **2243.3. Renewal of Certification.**

A school seeking renewal of certification shall apply in writing to the Secretary no later than six months prior to the end of any period of certification. Where appropriate, the school may incorporate by reference its prior application or any portion thereof. Certification of a school completing timely application shall extend until the State Board acts on further certification. Any school seeking renewal that has obtained initial approval to offer or operate a program of college or professional education for credit or degree on or after January 1, 2015, shall obtain accreditation from an accrediting entity recognized by the U.S. Department of Education, in order to be considered eligible for renewal by the State Board within the first 10 years of operation.

### **2243.4. Costs of Review.**

Post-secondary schools seeking a certificate of approval or renewal thereof shall be responsible for payment of fees as detailed in 16 V.S.A. § 177. to the Agency to cover the costs of services related to the certification. In addition, the applicant shall separately reimburse the non-Agency site visit review team members for travel, food and, lodging expenses associated with evaluation costs. Schools seeking a certificate of degree-granting authority shall be responsible for payment of fees as detailed in 16 V.S.A. § 177. to the Agency, a portion of which will be paid to the Vermont Higher Education Council to cover the costs of certification. In addition, the applicant shall separately reimburse individuals serving on the review team for travel, food, and lodging expenses associated with evaluation costs. Payment of the costs of services related to the certification shall accompany the application and is non-refundable. An application shall not be deemed complete until the payment is made.

### **2243.5. Criteria for Issuance of a Certificate of Approval.**

To be issued a certificate of approval, an applicant shall demonstrate the following:

#### **2243.5.1. Resources Required to Meet Stated Purposes.**



The school shall submit a clear and specific statement of purpose regarding the education that it intends to provide and shall demonstrate that it has the resources, including personnel, curriculum, finances, and facilities necessary to accomplish its stated purposes. All activities conducted by the school shall be consistent with its stated purpose.

#### **2243.5.2. Stability.**

(a) Sources of Income. The school shall have a plan for financing each proposed degree or program. The plan shall specify the dollar amounts and proportions of income by source, including:

- (1) Tuition and fees.
- (2) Other school-generated funds.
- (3) Federal or State funds.
- (4) Private funds.

(b) Financial Capability. The school shall demonstrate in its financial plan that it will have sufficient funds to maintain operation and shall clearly document its ability to fulfill contractual obligations to students.

(c) Management. The school shall operate under a governing structure that clearly delineates responsibility for all legal aspects of operations. The school shall demonstrate sound business and financial management by showing evidence of an internal organization for the administration of its financial resources and a school budget planning process. In addition, the school shall maintain adequate financial records audited annually by an independent certified public accountant.

#### **2243.5.3. Disclosure.**

Information provided by the school to prospective students either directly or through advertisements shall not be false or misleading. The school shall be able to substantiate any claims regarding such matters as the likelihood of employment, graduate school admission, or transfer of credit. The following information shall be disclosed on the school's website and in a general catalogue, bulletin, or other public information document provided to prospective students prior to enrollment.

- (a) Name and physical address of school.
- (b) Date of publication of the document and the period of time to which it pertains.
- (c) The school's calendar including beginning and ending dates of educational programs, holidays and other dates of importance.
- (d) The purpose and philosophy of education of the school.
- (e) A brief description of the school's physical facilities as related to the educational program.

- (f) An accurate list of all educational activities.
- (g) An indication of when specific required courses or other required learning experiences will normally be available.
- (h) Educational content of each course, or of the program if separate courses do not exist.
- (i) The length of time in hours, weeks, or months normally required for completion of the educational program.
- (j) An accurate listing of current educational providers.
- (k) An indication of the distinction, if any, between adjunct or part-time educational providers and full-time educational providers.
- (l) Policies and procedures regarding the extent to which educational experiences at other schools or other forms of learning will be counted toward meeting graduation requirements.
- (m) Requirements for graduation.
- (n) A statement of the certificates or diplomas awarded upon graduation, if any.
- (o) A statement of the degrees awarded upon graduation, if any. If a degree is to be conferred by an out-of-state post-secondary school as a result of credits earned both at a school doing business in Vermont and elsewhere as a condition of the degree, how the credits earned in Vermont are integrated into the overall degree requirements.
- (p) The system of grading or evaluation.
- (q) The school's policy establishing standards for determining adequate progress.
- (r) The availability and extent of student services such as job placement services, counseling for academic and personal problems, food service facilities, and parking facilities.
- (s) The availability of financial aid.
- (t) An accurate representation of, and the distinction between, school accreditation, institutional memberships in professional organizations, specialized or professional program accreditation, State Veteran's Affairs-approving agency course approval, and State certification.
- (u) The school's policy regarding the refund of tuition and other fees collected in advance of enrollment or class attendance.

(v) The school's "closing" policy establishing procedures that will be followed in the event that a determination is made to cease operation.

(w) The school's student records policy with provisions regarding access, disclosure, and the cost of copies.

(x) A statement that credits earned at the school are transferable only at the discretion of the receiving school.

#### **2243.5.4. Facilities**

The school's facilities shall meet all applicable State, federal and local fire, safety, health, and access standards.

#### **2243.5.5. Student Records**

The school shall have adequate procedures for the safe-keeping of student records and for complying with the requirements of 16 V.S.A. § 175.

#### **2243.5.6. Waiver of Requirements for Certification**

A school that believes that one or more of the above requirements for certification should not be applied to it may request in writing that such requirement be waived in its application for certification. Requests for waivers must accompany the application. The State Board may waive requirements and grant certification when it determines that the school is capable of providing its proposed program and that the students are adequately protected.

#### **2243.6. Criteria for Issuance of a Certificate of Degree Granting Authority**

To be issued a certificate of degree granting authority, a school shall show that it meets all of the criteria for issuance of a certificate of approval and in addition shall demonstrate the following:

(a) Schools desiring to offer post-secondary degrees, including graduate degrees, shall clearly state their criteria for granting each degree and the procedure for determining that these criteria are met.

(b) Schools desiring to offer an associate degree shall provide and require completion of a minimum of 60 semester credit hours or equivalent learning experiences.

(c) Each educational program leading to a baccalaureate degree shall provide and require a minimum of 120 semester credit hours or equivalent learning experiences.

(d) Candidates for a degree shall be required to complete a coherent program of study.

#### **2243.7. Certification Limitations**

The State Board may grant a certificate of approval or degree granting authority, or renewal thereof, for a period of time the Board deems reasonable and appropriate not to exceed five years and upon such conditions, terms, or limitations as the Board deems necessary. A school that has been granted either a certificate of approval or a certificate of degree granting authority shall notify the State Board prior to making substantive changes in or additions to the educational program described in its last application for certification. The State

Board may require a school to reapply for certification following program changes that are inconsistent with the purposes and educational philosophy stated by the school in its most recent application for certification or prior to offering a new level such as changing from an associate to an undergraduate degree program, or adding a new graduate degree program, or a new degree.

#### **2243.8. Denial, Approval with Stipulations, Revocation, or Suspension of Certification.**

##### **2243.8.1. Process.**

Prior to recommending denial, approval with stipulations, revocation, or suspension of certification to the State Board, the Secretary shall notify the school in writing of the reasons for the proposed action. The school shall be given 30 days to respond, and, if requested, shall be afforded a hearing before the Secretary or the Secretary's designee. The school shall also be afforded an opportunity to be heard by the Board before any action is taken.

##### **2243.8.2. Criteria for Revocation or Suspension.**

The Board may suspend or revoke certification for good cause, including:

- (a) Failure of the school to continue to meet criteria for certification herein specified.
- (b) Failure of the school to meet the terms and conditions or limitations of certification established by the Board.
- (c) Falsification of information provided to the Board.
- (d) False or deceptive advertising.
- (e) Judgment of bankruptcy in a liquidation proceeding.
- (f) Ceasing of operation.
- (g) Refusal to permit team evaluation or other investigations provided for under these rules.
- (h) Change in accreditation status.

##### **2243.8.3. Investigations.**

The Secretary may conduct any investigations of a school that the Secretary deems to be necessary and appropriate in order to ensure compliance with the terms of these rules. A school shall permit any authorized representative of the Secretary to visit its facilities and secure relevant information during the normal course of business. The school shall be notified prior to such a visit.

##### **2243.8.4. Loss of Recognition for Accreditor.**

- (a) In the event an accrediting entity is no longer recognized by the U.S. Department of Education, any post-secondary school having received accreditation from such entity shall:

(1) Notify the State Board in writing within 30 days of receiving notice or information of such loss of recognition.

(2) Apply for accreditation with a recognized accreditor at least 90 days before the school's existing accreditation expires.

(b) The post-secondary school may continue to operate under its approval by the State Board pending receipt of its new accreditation, but in no case longer than 24 months. The State Board may extend this period upon request of a post-secondary school going through the accreditation process.

## **Section 2250. Preservation of Post-Secondary Institutions' Student Records.**

Statutory Authority: 16 V.S.A. § 175.

### **2250.1. General.**

Institutions of higher education are required to maintain their student academic records in a form prescribed by the State Board. The Agency is authorized to ensure that the student academic records are in appropriate form. The institution of higher education is required to inform the State Board in the event it intends to close and to surrender its student academic records to a repository designated by the Board for storage. The repository is authorized to make verified copies available to students and former students.

### **2250.2. Maintenance of Academic Records.**

Each institution of higher education operating in this State shall maintain its permanent records in such a manner that they could be delivered to the State Board in a satisfactory form should the institution discontinue operation. At a minimum, the records shall be kept current and preserved against damage or loss.

#### **2250.2.1. Monitoring.**

Upon reasonable notice, every institution shall make available to a representative of the State Board its student records for the purpose of ensuring compliance with this rule. Examination of the records under this section shall take place in a manner that will not permit identification of individual students.

#### **2250.2.2. Return of Records.**

A repository may duplicate the records of an institution and then return the original records to the institution.

#### **2250.2.3. Institutions Discontinued Prior to April 25, 1979.**

The custodian of records of institutions discontinued prior to April 25, 1979, shall be subject to the requirements of 16 V.S.A. § 175. and these rules.

### **2250.3. Form and Contents of Academic Records.**

The permanent academic record of each student registered for credit at a post-secondary institution that operates in this State, whether or not such institution is chartered in this State, shall contain at a minimum:

(a) The identification of the institution.

(b) The identification of the student.

(c) The record of courses satisfactorily completed and evaluation of the student's work therein, or, if records are not kept in this form, other records of the student's studies and academic progress.

(d) Periods of enrollment covered by subsection (c) above.

(e) The student's status at the close of the last period of enrollment.

(f) The degree and/or certificates awarded.

A key to, or explanation of, the student's permanent academic record shall be available to accompany this record.

**[Section 2260 to 2265 Repealed by Operation of Law.]**

**Section 2266. ~~Post-Secondary Online or Correspondence Schools.~~**

An online or correspondence school that offers post-secondary credits or degrees shall also meet the applicable requirements of 16 V.S.A. §§ 176. and 176a.

**Kindergartens**

**Section 2270. ~~Private Kindergarten Approval.~~**

Statutory Authority: 16 V.S.A. § 166-(b)-

**Section 2271. ~~Procedure for Approval.~~**

**2271.1. ~~Application.~~**

Every person or entity seeking to operate as an approved kindergarten shall apply in writing to the Secretary. An application for approval shall contain the following:

(a) The name and address of the school.

(b) A description of the school's curriculum and methods of instruction.

(c) A description of the school's physical facilities.

(d) A list of the school's staff and their qualifications.

(e) The operating schedule of the school

(f) A statement certifying that the school is in compliance with the Kindergarten Nursery School provisions in the Regulations for Day Care of the Department for Children and Families. (hereinafter "D.C.F. Kindergarten Regulations").

### **2271.2. Appointment of Reviewer**

Upon receipt of an application for approval, the Secretary shall appoint an educator to review the application and visit the school. In addition, the Secretary shall contact D.C.F. to determine on his or her behalf whether the school meets the "D.C.F. Kindergarten Regulations." First priority for review shall be given to private kindergartens that are located in the vicinity of towns where the local school board or town has taken a formal vote to provide public supported kindergarten.

### **2271.3. Review**

The appointed educator shall review the application and visit the school.

### **2271.4. Report to the Secretary**

The appointed educator shall present a written report including a recommendation regarding approval to the Secretary. The report of the appointed educator shall incorporate the determination of D.C.F. concerning compliance with the "D.C.F. Kindergarten Regulations". A copy of the report and recommendation shall be provided at the same time to the applicant.

### **2271.5. Secretary's Recommendation**

The Secretary shall recommend approval or disapproval for action by the State Board at its next regular meeting. Officials of the kindergarten shall be notified of this meeting date.

## **Section 2272. Criteria for Approval**

The State Board shall approve a private kindergarten if it finds that:

(a) The curriculum embodies a minimum course of study, as defined in 16 V.S.A. § 906., Courses of Study, with learning experiences adapted to a student's age and ability.

(b) The school is in compliance with State requirements pertaining to the health and safety of students adopted by the Department of Labor and Industry and the Department of Health. In regards to health requirements, private kindergartens located in elementary or secondary school buildings shall comply with the Environmental Health Regulations for School Houses (Chapter 5, Subchapter 3, Vermont Health Regulations). All other private kindergartens shall comply with the Environmental Health Regulations for Day Care Facilities (Chapter 5, Subchapter 14, Vermont Health Regulations.)

(c) The director and teachers in the kindergarten are qualified through training or experience in:

(1) Structuring kindergarten learning environments that enhance cognitive and social development.

(2) Teaching skills and concepts in mathematics, language arts, science, the arts, and health that are consistent with principles of child development.

(3) Planning and leading activities that foster social and emotional growth in young children.

(4) Dealing with parents and family of children to ensure home support and to promote learning outside of the school or center.

(5) Identifying developmental delays in young children.

(d) The kindergarten maintains an operating schedule that, exclusive of time allowed for meals and recess periods, includes a total number of instructional hours that is not less than that required of a public school kindergarten. (State Board of Education Policy Manual, 1981, Section 2311.4).

(e) The facility and program meet the "D.C.F. Kindergarten Regulations."

### **Section 2273. Additional Requirements.**

#### **2273.1. Records.**

Approved private kindergartens shall maintain records of attendance, health, and progress for public tuition students, in a form required by the school district and in accordance with State and federal law. These records shall be transferred to the public schools no later than July 15 after the end of the school year.

#### **2273.2. Professional Development.**

The director and teachers in an approved private kindergarten shall participate in professional development activities provided by the public school district.

### **Section 2274. Term of Approval.**

The State Board may grant approval for a term of not more than two years. A private kindergarten must be approved prior to receiving tuition payments from a public school district.

### **Section 2275. Revocation or Suspension of Approval.**

Prior to recommending revocation or suspension of approval to the State Board, the Secretary shall notify the kindergarten of the reasons for the proposed action and shall afford the kindergarten an opportunity to be heard by the Board. Approval of a kindergarten shall be revoked or suspended by the Board based on a finding that the kindergarten no longer meets the criteria for approval.

### **Section 2276. Effective Date**

Amendments to all Sections shall become effective 15 days after adoption is complete in accordance with 3 V.S.A. §845(d), except as follows:

(a) Section 2224 (Application and Reapplication for Approval; Approval Process) will take effect on July 1, 2024;

(b) Section 2223 [except for Subsection 2223.4 (Annual Compliance Assurance) and Subsections 2223.3.3(b) (Instructional Strategies) and 2223.3.3(c)(1) (Curriculum Content)] will take effect on July 1, 2024; and

(c) Subsections 2223.3.3(b) and 2223.3.3(c)(1) will take effect on July 1, 2025.





**Vermont State Board of Education**  
**Manual of Rules and Practices**  
**Series 2200 – Independent School Program Approval**  
CVR 22 000 004  
Side-by-Side Final Proposed Rule (August 25, 2023)

Comments (Current Language)	Current Language	Proposed Language	Comments (Proposed Language)
	<b>Rule 2200. Independent School Program Approval</b>	<b>Rule 2200. Independent School Program Approval</b>	
	Pursuant to Act 173 of 2018, as amended, these rules take effect on July 1, 2023 except the following rules which take effect on adoption: Rule 2223 (Procedure), Rule 2224 (Reciprocity), Rule 2226 (Application) and Rule 2227 (Approval).		Removed; unnecessary
	<b>Section 2220. Statement of Purpose</b>	<b>Section 2220. Statement of Purpose</b>	
	The purpose of independent school approval rules is to assure effective, available, and equitable educational opportunities for students enrolled in Vermont's independent schools in accordance with State and federal law and aligned with the purposes set forth in Act 173 of 2018.	<p>The purpose of independent school approval rules is to assure effective, available, and equitable, educational opportunities that are anti-racist, culturally responsive, anti-discriminatory, and inclusive for students enrolled in Vermont's approved independent schools in accordance with State and federal law and aligned with the purposes set forth in Act 173 of 2018 and Act 1 of 2019.</p> <p>These rules are organized to provide clarity to independent schools regarding requirements for initial and continued approval to operate and, and if applicable, to receive public funds. Ongoing compliance with state and federal laws and regulations is expected through annual compliance assurances. Accrediting agencies that meet criteria indicating high quality, experience, and alignment</p>	<p>Modified to reflect Act 1 updates; mirrors phrases from EQS 2110</p> <p>Speaks to changes to provide clarity in application and approval process; new compliance assurance requirements, and process for becoming a recognized accrediting agency.</p>

		<p>with Vermont’s educational values will be recognized and the schools they accredit will enjoy an accelerated approval process.</p> <p>The Board believes that any distinction, exclusion, classification, restriction or preference based on any ground, such as race, ethnicity, skin color, sex, sexual orientation, gender identification, language, religion, political or other opinion, disability, national, social or geographic origin, citizenship or immigration status, income or property, birth or other status, which has the purpose or effect of denying or impairing the recognition, enjoyment or exercise of fundamental rights and freedoms in the political, economic, social, cultural, civil or any other field should be carefully considered and rejected if it results in unlawful discrimination or interferes with the delivery of effective, available, and equitable educational opportunities. The Board recognizes that discrimination is practiced by individuals and groups, and it is expressed systemically through the structures, laws, practices, and policies of public and private institutions, employers, and organizations.</p> <p>In addition to the non-discriminatory protections in Subsection 2223.2 (Nondiscrimination Requirements for Approved Schools), discrimination against any student pursuing an education or participating in the general life or activities of a school as a result of or based upon, ethnicity, caste, language and linguistic diversity, socio-economic status, religion, housing status, and non-citizenship or immigration status, does not embody the intent of the Board to promote</p>	<p>Resembles EQS definition of Discrimination, 2110 (Statement of Purpose). Change from EQS reference to Subsection to align with this Rule Series.</p> <p>Change from EQS reference to Subsection to align with this Rule Series. Modified from EQS language: “In addition to the non-discriminatory protections in Subsection (...), these rules prohibit discrimination against any student pursuing an education or participating in the general life or activities of a school as a result of or based upon, ethnicity, caste, language</p>
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		<p>welcoming, inclusive, bias-free environments for learning in Vermont's schools.</p> <p>These rules further require all schools to strive for a culturally responsive pedagogy that critically examines and imparts a comprehensive historical and socially conscious understanding of:</p> <p>(a) the causes and effects of bias and discrimination as a result of, or based upon, the reasons set forth in Subsection 2223.2 of this Manual and in this Statement of Purpose;</p> <p>(b) why all persons should have equitable access to social and economic opportunity;</p> <p>(c) why persons and institutions must identify and prevent individual, group, and systemic racism, discrimination, and other forms of unfair treatment; and</p> <p>(d) the positive and multi-faceted contributions of different social, cultural, racial, linguistic ethnic and indigenous groups to the historical and ongoing project of building and strengthening democracy in the United States and globally.</p> <p>Nothing herein shall be construed to entitle any student to educational programs or services identical to those received by other students in the same or different schools. These rules are in addition to and, unless otherwise specifically stated, do not supersede other rules adopted by the Agency of Education or contained in the Vermont State Board</p>	<p>and linguistic diversity, socio-economic status, religion, housing status, and non-citizenship or immigration status.”</p> <p>EQS 2110: Nothing herein shall be construed to entitle any student to educational programs or services identical to those received by other students in the same or different Supervisory Union/Supervisory District (SU/SD) or school. These rules are in addition to and, unless</p>
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		of Education Manual of Rules and Practices. Nothing herein shall create a private right of action.	otherwise specifically stated, do not supersede other rules adopted by the Agency of Education or contained in the Vermont State Board of Education Manual of Rules and Practices. This manual adopts a definition of Discrimination that is broader than its legal definition. Nothing herein shall create a private right of action.
	<b>Section 2221. Statutory Authority</b>	<b>Section 2221. Statutory Authority</b>	
	16 V.S.A. §§ 166., 2958(e), and 2973.	16 V.S.A. §§ 164(14), 166, 2958(e), 2959 and 2973; 2019 Act No. 1.	Adds Act 1/EQS; notes underlying authority to promulgate rules to approve independent schools.
	<b>Section 2222. Definitions</b>	<b>Section 2222. Definitions</b>	
	Agency: means the Vermont Agency of Education.	<p>“Agency” means the Vermont Agency of Education.</p> <p>“Anti-discrimination” means actions, behaviors, programs and policies by school staff, students, school directors, contractors, and community members involved in the daily operations of schools that are necessary to counter discrimination as defined in this Manual, and that promote a fair, just and equitable learning environment for all students.</p> <p>“Anti-racist” means actions, behaviors, programs, and policies designed and/or implemented by school staff, students, school directors, contractors, and community members involved in the daily operations of schools that are necessary to counter racism as defined in this Manual and that promote a racially inclusive learning environment for all students.</p>	<p>EQS Definition; Pulled in because the word is used in this series with content additions from EQS.</p> <p>EQS Definition; Pulled in because the word is used in this series with content additions from EQS.</p>

	<p>Approved Independent School: means an independent school that meets the requirements in Rule 2223.3 as well as the requirements in SBE Rule 2225 (tuition from public funds) and SBE Rule 2226 (Application).</p> <p>Approved Independent School Ineligible to Receive Public Funds: means an independent school that meets the requirements in SBE Rules 2226 (Application) and 2227 (Approval) but does not meet the requirements of rules concerning the delivery of special education services in SBE Rule 2229.</p> <p>Board (or State Board or SBE): means the Vermont State Board of Education.</p>	<p>“Approved Independent School” means an independent school that meets the requirements in Sections 2223 and 2224, as well as the requirements in Section 2229 (Approval to Receive Public Tuition; Special Education Approval).</p> <p>“Approved Independent School Ineligible to Receive Public Funds” means an independent school that meets the requirements in Sections 2223 and 2224 but does not meet the requirements of rules concerning the delivery of special education services in Section 2229.</p> <p>“Approved School” means any approved independent school that meets the requirements of Sections 2223 and 2224 of these rules.</p> <p>“Board” or “State Board” or “SBE” means the Vermont State Board of Education.</p> <p>“Caste” refers to a hierarchical social system of exclusion and dehumanization based on invented notions of purity and contamination. Those who suffer the stigma of caste are often deprived of or severely restricted in the enjoyment of their civil, political, economic, social, and cultural rights.</p> <p>“Civic and Community Engagement” means individual and/or collective actions that identify and address issues of public importance, and that provide people with opportunities that contribute to the current and future development of their communities and a democratic society. Civic and community engagement can take place in a variety</p>	<p>Updates Section References. Reflects that 2223 and 2224 apply to both approved independent schools and approved independent schools ineligible to receive public funds.</p> <p>Updates Section References. Reflects that 2223 and 2224 apply to both approved independent schools and approved independent schools ineligible to receive public funds.</p> <p>New Definition.</p> <p>EQS Definition; Pulled in because the word is used in this series with content additions from EQS.</p> <p>EQS Definition; Not in this Rule Series. Committee believes this will be helpful in the future.</p>
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		<p>of formal and informal settings, including, but not limited to, those in governance and electoral politics, educational, cultural, and recreational activities, community service and social justice movements.</p> <p>“Critical thinking” is the objective examination of an issue to discern or form a judgment based on evaluating evidence, checking assumptions, and adopting multiple perspectives to better understand the question at hand.</p> <p>“Culturally and Linguistically Diverse Students” are those who are members of home, cultural and social environments whose experience and success is enhanced by schools demonstrating respect for a multitude of linguistic competencies and fostering systems of academic and social inclusion that acknowledge the fundamental importance of such competencies. Linguistic competencies are cultural and linguistic resources that students, families and communities draw upon, including, but not limited to, a variety of languages, including Indigenous languages, multiple-sign languages, and African American Vernacular English and other dialects.</p> <p>“Culturally responsive teaching” is an evidence-based approach that incorporates knowledge of diverse cultures, languages, and perspectives into learning activities and curriculum design, including connecting students' life experiences and ways of learning, that helps students to both access rigorous curriculum and to develop higher-order thinking skills.</p>	<p>EQS Definition; Not in this Rule Series. Committee believes this will be helpful in the future.</p> <p>EQS Definition; Pulled in because the word is used in this series with content additions from EQS.</p> <p>EQS Definition; Not in this Rule Series. Committee believes this will be helpful in the future.</p>
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		<p>“Culture” means a set of distinctive spiritual, material, religious, intellectual, creative, and emotional attributes of a society or social group, and encompasses, in addition to art and literature, lifestyles, ways of living together, values, traditions, and beliefs.</p> <p>“Discrimination” is intended to describe any exclusion, restriction, or preference based on any protected class consistent with state and federal law that has the purpose or effect of denying or impairing the recognition enjoyment or exercise of an individual’s fundamental rights. Discrimination is practiced by individuals and groups, and it is expressed systemically through the structures, laws, practices, and policies of public and private institutions, employers, and organizations.</p>	<p>EQS Definition; Pulled in because the word is used in this series with content additions from EQS.</p> <p>New Definition. This is modified from the EQS Definition: “Discrimination” means any distinction, exclusion, classification, restriction or preference based on any ground, such as race, ethnicity, skin color, sex, sexual orientation, gender identification, language, religion, political or other opinion, disability, national, social or geographic origin, citizenship or immigration status, income or property, birth or other status, which has the purpose or effect of denying or impairing the recognition, enjoyment or exercise of fundamental rights and freedoms in the political, economic, social, cultural, civil or any other field. Discrimination is practiced by individuals and groups, and it is expressed systemically through the structures, laws, practices, and policies of public and private institutions, employers, and organizations.”</p>
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		<p>“Equity” or “Equitable” means that each student receives the resources and educational opportunities to learn and thrive in the classroom and in all aspects of learning, school life, career technical education, and community-school interactions, and to discover and cultivate their talents and interests. To be achieved, equity requires an inclusive school environment and may necessitate an unequal distribution of resources and services based on the needs of each student.</p> <p>“Ethnic Group” means a group whose members identify with each other based on certain criteria, including a common history, ancestry or culture, religion, nationality, social or geographic origin, skin color, language, and experiences of discrimination and social exclusion, persecution, or other inhuman treatment.</p> <p>“Ethnic Studies” means interdisciplinary, age appropriate and grade-appropriate curricula and programs dedicated to the historical and contemporary study of race, ethnicity, and indigenous peoples (including the Indigenous People of Vermont). This requires a critical examination of the experiences and perspectives of racial and ethnic groups and indigenous peoples that have suffered systemic oppression, marginalization, discrimination, persecution, and genocide within and outside the United States. “Ethnic Studies” may involve a critical examination of these experiences and perspectives through the lens of the characteristics of social identity groups.</p>	<p>EQS Definition; Pulled in because the word is used in this series with content additions from EQS</p> <p>EQS Definition; Pulled in because the word is used in this series with content additions from EQS</p> <p>EQS Definition; Pulled in because the word is used in this series with content additions from EQS .</p>
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<p>Moved below to be in alphabetical order. No change.</p>	<p>Individualized Education Program (IEP): means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with SBE Rule 2363.</p> <p>Therapeutic Approved Independent School (or Therapeutic Independent School or Therapeutic School): means an approved independent school that limits enrollment to students who are on an IEP or plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. and who are enrolled pursuant to a written agreement between an LEA and the school. These schools are eligible to receive public tuition, which is inclusive of both general and special education services and is at a rate approved by the Agency of Education.</p>	<p>“Ethnicity” means a concept that embodies a wide range of criteria used to identify ethnic groups, such as a common history, ancestry or culture, national, social or geographic origin, skin color, languages, religions, tribe or indigenous people (including the Indigenous Peoples of Vermont), or various combinations of these characteristics.</p> <p>“Inclusive” or “Inclusion” means school-based curricula, programs, activities, resources, and policies that ensure that academic learning, co-curricular and social offerings, and all other aspects of school life are based on the values of equality, equity, social and cultural diversity, freedom and dignity, so that all students are valued as unique individuals and can achieve their full academic and social potential.</p> <p>“Individualized Education Program (IEP)” means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Section 2363.</p> <p>“Intercultural Competency” describes practices and actions to pursue deep understanding, mutual respect, and willingness to learn about the cultures of all people, especially those who have been marginalized, silenced, and/or undervalued.</p> <p>“Interdisciplinary” means examining and teaching a subject from multiple academic perspectives and encouraging students to engage with and to synthesize diverse perspectives and narratives,</p>	<p>EQS Definition; Pulled in because the word is used in this series with content additions from EQS</p> <p>EQS Definition; Pulled in because the word is used in this series with content additions from EQS</p> <p>EQS Definition; Not in this Rule Series. Committee believes this will be helpful in the future.</p> <p>EQS Definition; Not in this Rule Series. Committee believes this will be helpful in the future.</p>
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	<p>Local Education Agency (LEA): as that term is defined in 20 U.S.C. § 7801.(26), means the supervisory union or supervisory district.</p>	<p>including those from their lived experiences, into a coherent understanding or analysis.</p> <p>“Language” means systems of conventional and unconventional spoken, visual-manual, technological, and written symbols, which human beings use personally and as members of social and cultural groups to express themselves; shape identity; acquire knowledge, mediate power, play, create, and imagine; build and sustain familial, social, and cultural bonds; and express a wide range of personal needs, aspirations, and emotions.</p> <p>“Linguistic diversity” means the immense body of diverse and complex systems of communication and expression (e.g., official languages, endangered languages, indigenous and minoritized languages, dialects, and non-verbal languages and communication), the respect for and preservation of which is fundamental to students ’experience and academic success; eradicating bias, racism, and discrimination; and fostering practices and systems of inclusion, equality, equity, and diversity in our schools and communities.</p> <p>“Local Education Agency (LEA)” as that term is defined in 20 U.S.C. § 7801(26), means the supervisory union or supervisory district.</p> <p>“Neurodiversity” refers to the natural and important variation in how human minds think and is not to be cured or corrected to fit social norms. These differences can include autism, attention deficit</p>	<p>EQS Definition; Pulled in because the word is used in this series with content additions from EQS</p> <p>EQS Definition; Pulled in because the word is used in this series with content additions from EQS</p> <p>EQS Definition; Pulled in because the word is used in this series with content additions from EQS</p>
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	<p>Recognized Independent School: means an independent school meeting the requirements in 16 V.S.A. § 166.(c). A recognized independent school is not eligible to receive public tuition.</p>	<p>hyperactivity disorder, dyspraxia, dyslexia, dyscalculia, and Tourette Syndrome.</p> <p>“Race” means any invented or socially constructed concept that is used to categorize groups and cultures on the basis of physical differences transmitted through descent, like skin color.</p> <p>“Racism” means the theory, belief, or act of making value judgements that are based on racial, ethnic, or cultural differences, or which advances the claim that racial, ethnic, or cultural groups are inherently superior or inferior, thus explicitly arguing or implying that some groups are entitled to dominate, exploit, exclude, or eliminate others presumed to be inferior. Racism is practiced by individuals and groups, and it is expressed systematically through the structures, laws, regulations, practices and policies of public and private institutions, employers, and organizations.</p> <p>“Recognized Independent School” means an independent school meeting the requirements in 16 V.S.A. § 166(c). A recognized independent school is not eligible to receive public tuition.</p> <p>“Restorative Practices” refer to the whole-school, relational approaches to building school climate and addressing student behavior that fosters belonging over exclusion, social engagement over control, and meaningful accountability over punishment. It encourages members of the school community to be constantly present, attending to needs as they arise. It exercises their ability to be dynamic rather than</p>	<p>EQS Definition; Pulled in because the word is used in this series with content additions from EQS</p> <p>EQS Definition; Pulled in because the word is used in this series with content additions from EQS</p> <p>EQS Definition; Pulled in because the word is used in this series with content additions from EQS.</p>
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	<p>Secretary: means the Secretary of the Vermont Agency of Education.</p> <p>Special Education Fees: means funds paid by a school district or supervisory union to an approved independent school for special education services beyond those covered by general education tuition, as defined in 16 V.S.A. § 2973.(b)(2)(B).</p> <p>Special Education Services: means specially designated instruction at no cost to the parent, to meet the unique needs of an eligible student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions and in other settings; and instruction in physical education.</p> <p>Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result</p>	<p>static in their responses. Restorative approaches also begin with proactive structures to build positive relationships and communication and create a space for people to express themselves—their strengths, assets, responsibilities, and also their vulnerability.</p> <p>“Secretary” means the Secretary of the Vermont Agency of Education or their designee</p> <p>“Social Identity Group” means a group of people who share common characteristics that shape their identify and promote a sense of unity, including sex, sexual orientation, gender identification, disability, class, socio-economic status, or other characteristics that are fundamental to identity.</p> <p>“Special Education Fees” means funds paid by a school district or supervisory union to an approved independent school for special education services beyond those covered by general education tuition, as defined in 16 V.S.A. § 2973(b)(2)(B).</p> <p>“Special Education Services” means specially designated instruction at no cost to the parent, to meet the unique needs of an eligible student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions and in other settings; and instruction in physical education.</p> <p>“Specially designed instruction” means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result</p>	
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<p>Outdated language. Not in statute or other rules. Deleted after consultation with Agency.</p>	<p>from the student's disability and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the State that apply to all children. This definition is intended to be consistent with the term "Special Education Services" as used in SBE Rule 2360.2.12.</p> <p>Student: means a person age three through age twenty-one.</p> <p>Student who requires additional support: means a student who meets the criteria defined in 16 V.S.A. § 2942.(8).</p> <p>Tuition: means funds paid by a school district to an approved independent school for general education in accordance with SBE Rule 2225.</p>	<p>from the student's disability and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the State that apply to all children. This definition is intended to be consistent with the term "Special Education Services" as used in Subsection 2360.2.12.</p> <p>"Student who requires additional support" means a student who meets the criteria defined in 16 V.S.A. § 2942(8).</p> <p>"Therapeutic Approved Independent School" or "Therapeutic Independent School" or "Therapeutic School" means an approved independent school that limits enrollment to students who are on an IEP or plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. and who are enrolled pursuant to a written agreement between an LEA and the school. These schools are eligible to receive public tuition, which is inclusive of both general and special education services and is at a rate approved by the Agency of Education.</p> <p>"Tuition" means funds paid by a school district to an approved independent school for general education in accordance with Section 2228.</p>	<p>[Definition of "Student" is deleted. See note.]</p> <p>Moved from above. Current Language; no change.</p> <p>Section Reference Changed.</p>
	<p><b>Section 2223. Procedures for Approved Independent Schools and Approved Independent Schools Ineligible to Receive Public Funds</b></p>	<p><b>Section 2223. Requirements to Operate as an Approved Independent School or an Approved Independent School Ineligible to Receive Public Funds</b></p>	<p>This section combines elements from several sections to group all the requirements to "operate" an approved independent school. To</p>

			minimize the need to cross reference rules with statute, directives from Title 16 are also newly articulated here, though the directives aren't new. Parts of Act 1/EQS also appear here.
Now in 2224.1.2	<p>Every person or entity desiring to operate an approved independent elementary or secondary school shall apply in writing to the Secretary. An application shall meet the requirements of SBE Rule 2226(Application).</p> <p>Upon receipt of an application for initial approval or renewal of approval, the Secretary shall appoint a review committee of at least two persons.</p>	<p>Every person or entity desiring to operate an elementary or secondary school as either an approved independent school or an approved independent school ineligible to receive public funds shall apply in writing to the Secretary and meet the requirements of law and these rules. Approved schools shall be permitted to operate for a term of five years or less, as set by the Board, and may submit a new application for approval (reapproval) prior to the expiration of each term. The Board may revoke, suspend, or impose conditions upon an approved school according to process set forth in these rules.</p>	<p>Clarify that approval is based on meeting requirements of rule and law; not just application.</p> <p>Restates 16 V.S.A. §166(b)</p>
	<b>2223.1 Visit.</b>	<b>2223.1 General Requirements for Approved Schools</b>	
Incorporated into 2224.1.2	<p>The review committee shall visit the school. To the extent possible, the visit shall be coordinated by the Secretary with other agencies of state government that inspect such facilities.</p>	<p>All approved schools must comply with statutory requirements and the Board's rules for approved schools and must provide a minimum course of study pursuant to 16 V.S.A. §906. An approved school must have the resources required to meet its stated objectives, including financial capacity, faculty who are qualified by training and experience in the areas in which they are assigned, and physical facilities and special services that are in accordance with state and federal law or regulation.</p>	Restates 16 V.S.A. §166(b)
	<b>2223.2 Report.</b>	<b>2223.2 Nondiscrimination Requirements for Approved Schools</b>	

<p>Incorporated into 2224.1.2</p>	<p>The committee shall write a report, including a written initial recommendation regarding approval, to the Secretary. A copy of the initial recommendation shall be provided at the same time to the applicant. The applicant shall be given 30 days to respond before the Secretary makes a final recommendation regarding approval to the State Board. The Secretary's final recommendation shall contain the findings of other agencies of state government that inspect such facilities.</p>	<p>Each approved school shall maintain a statement of nondiscrimination that is consistent with the Vermont Public Accommodations Act, Title 9 Vermont Statutes Annotated, Chapter 139 and the Vermont Fair Employment Practices Act, Title 21 Vermont Statutes Annotated, Chapter 5, Subchapter 6. The statement shall be displayed on its website and included in the school's application materials. The school shall abide by its nondiscrimination policies in all aspects of the school's recruitment, enrollment, operation, and employment activities.</p>	<p>Restates Previous 2226.6 Language</p> <p>New sentence added to transition from "application checklist" language to "requirements."</p>
		<p><b>2223.2.1 Nondiscrimination Statement and Policy</b></p> <p>No student shall be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program of activity as the result of, or based upon, the student's race, gender, color, creed, national origin, martial status, sexual orientation, gender identity or disability, or any other reason set forth in state or federal non-discrimination requirements.</p> <p>(a) The Agency shall develop a method to assess a school's compliance with this subsection that shall be used to investigate complaints of non-compliance and by the Agency when evaluating applications for approval by accredited and non-accredited schools. The method shall provide indicators of compliance and shall be made available to schools for their ongoing self-assessment.</p>	<p>Pulled exactly from EQS 2113.</p> <p>Added to assist in the (1) implementation of this provision, (2) application of the Annual Compliance Assurance, (3) demonstration of the findings required prior to approval of schools, and (4) evaluation of compliance in the event of an investigation.</p>
	<p><b>2223.3 General Conditions for Approval</b></p>	<p><b>2223.3 Specific Requirements for Approved Schools</b></p>	
<p>Now in 2224</p>	<p>Approval shall be recommended for an independent school offering elementary or secondary education that provides a minimum course of study pursuant</p>	<p>Each approved school shall maintain a safe, accessible, orderly, civil, flexible, and positive learning environment, free from hazing, harassment,</p>	<p>Parallels EQS 2122.1: Each school shall maintain a safe, accessible, orderly, civil, flexible, and positive learning</p>



	<p>to 16 V.S.A. § 906. and that substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools, including Rule 2226 and Rule 2227. Effective July 1, 2023, an independent school that intends to accept public tuition must also meet the requirements of SBE Rule 2229. Effective July 1, 2023, a school meeting approval requirement in SBE Rules 2226 (Application) and 2227 (Approval) but not Rule 2229 (Approval to Receive Public Tuition, Special Education Approval) may be recommended for approval but may not receive public tuition.</p>	<p>and bullying. Educational opportunities shall be provided in an equitable, anti-racist, culturally responsive, anti-discriminatory, and inclusive manner, based on sound instructional and classroom management practices and clear discipline and attendance policies that are consistently and effectively enforced</p>	<p>environment, which is equitable, anti-racist, culturally responsive, anti-discriminatory, and inclusive; free from hazing, harassment, and bullying; and based on sound instructional and classroom management practices and clear discipline and attendance policies that are consistently and effectively enforced.</p>
		<p><b>2223.3.1 Physical Facilities</b></p>	
		<p>Each approved school must ensure that its physical facilities, including plant, materials, and equipment, meet all applicable state and federal requirements pertaining to the health, safety, and privacy of students.</p> <p>(a) Each residential school must arrange, on an annual basis, a fire safety inspection performed by the Department of Public Safety or its designee. A certificate executed by the inspecting entity, declaring satisfactory completion of the inspection, and identifying the date by which a new inspection must occur, shall be posted at the school in a public location. The school shall provide a copy of the certificate to the Secretary of Education after each annual inspection. The school shall pay the actual cost of the inspection unless waived or reduced by the inspecting entity.</p>	<p>Previously 2226.6 Previously 2226.7; adds "privacy"</p> <p>Restates 16 VSA §166(b)(7)</p>

		(b) Each school must have classroom, laboratory, library, and other facilities necessary to operate its program.	Previously 2227.4
		<b>2223.3.2 Financial Capacity, Solvency, and Stability</b>	
		<p>An approved school must maintain the financial capacity to meet its stated objective during the period of its approved status and must adhere to all required financial reporting requirements. For purposes of these rules, "financial capacity" means that anticipated revenue and funds on hand are sufficient to meet a school's stated objectives. Evidence of financial capacity may be shown by an audit letter by a certified accounting firm from the present or prior year describing financial capacity; a notarized letter summarizing the financial status within the present or prior fiscal year signed by the board of directors or governing body; an audit from the present or prior fiscal year performed by a certified accounting firm; or a statement of financial capacity of a private, state, or regional agency recognized by the State Board for accrediting purposes concerning the school's financial capacity.</p> <p>(a) Each approved school must file federal or state tax returns when due, unless an extension is granted; meet payroll and state payroll tax obligations as they are due; maintain required retirement contributions; ensure that designated funds are not used for nondesignated purposes; fully comply with the financial terms of its secured installment debt obligations; and not become insolvent as defined by 9 V.S.A. §2286(a).</p>	<p>Previously 2227.11 and 2226.9</p> <p>Previously 2226.9</p> <p>Previously 2223.8; Change Board to Secretary per 16 VSA §166(b)(8)</p>

		<p>(b) An approved school shall report to the Secretary within five days after its knowledge of any of the following events, unless the failure is de minimus:</p> <ol style="list-style-type: none"> <li>1. the school's failure to file its federal or State tax returns when due, taking into account permissible extensions of time;</li> <li>2. the school's failure to meet its payroll obligations as they are due or pay federal or State payroll tax obligations when due;</li> <li>3. the school's failure to maintain required retirement contributions;</li> <li>4. the school's use of designated funds for nondesignated purposes;</li> <li>5. the school's inability to fully comply with the financial terms of its secured installment debt obligations over a period of two consecutive months, including the school's failure to make interest or principal payments as they are due or to maintain any required financial ratios;</li> <li>6. the withdrawal or conditioning of the school's accreditation on financial grounds by a private, State or regional agency recognized by the Board for accrediting purposes; or</li> <li>7. the school's insolvency as defined in 9 V.S.A. § 2286(a).</li> </ol>	
		<b>2223.3.3 Instruction, Faculty, and Special Services</b>	

		<p>To demonstrate that it provides a minimum course of study as defined by 16 V.S.A. §906, an approved school must maintain a written description of its curriculum, methods of instruction, evaluation procedures, and the special services that it has designed to achieve its educational objectives, to demonstrate that it provides a minimum course of study as defined by 16 V.S.A. §906.</p> <p>(a) Professional Staff.</p> <ol style="list-style-type: none"> <li>1. The school must employ a sufficient number of professional staff for the population served who are qualified by training and experience in the areas in which they are assigned as measured by the following: <ol style="list-style-type: none"> <li>A. for teachers, a minimum of a bachelor's degree in their field of instruction or substantially equivalent time in training and experience in their field of instruction; and</li> <li>B. for all professional staff, relevant experience and/or training in other programs not related to teaching or administrative duties to which they are assigned.</li> </ol> </li> <li>2. The school must have an adequate program of continuing professional staff development. The school shall keep a general description of its staff meetings, expectations for professional growth of staff, and information describing the school's inservice training, financial, and other support given to staff for professional development.</li> </ol>	<p>Previously 2226.5</p> <p>Previously 2226.8.1; 2226.8.2; 2226.8.3; 2227.5; 2227.5.1, 2227.5.2; 2227.6 and 2227.7</p>
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		<p>3. Job descriptions for every position that describe training, experience, and degrees required for the position shall be maintained. The school shall also maintain a file with a resume, vita, or description of appropriate qualification for each current staff member, along with their current assignment, length of service, and description of duties not related to teaching or administration.</p> <p>(b) Instructional Strategies. Educators shall be supported in:</p> <ol style="list-style-type: none"> <li>1. examining their own identities and biases and fostering a learning environment that recognizes multiple ethnic, cultural and racial perspectives; presents and critiques historical counter-narratives; and encourages students to examine issues and expressions of social equity within and beyond the classroom or school;</li> <li>2. modeling and setting high expectations for all students - regardless of a student's prior academic experience, family background, socio-economic status or (dis)abilities and promoting respect for student differences;</li> <li>3. recognizing the essential role that language acquisition and literacy play in the lives of students, especially culturally and linguistically diverse students, not only in respect to listening, speaking, reading, and/or writing, but as home and community practices that shape a culturally responsive</li> </ol>	<p>Mirrors EQS 2120.1 exactly starting at second paragraph.</p>
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		<p>understanding of students' social, racial, linguistic, and ethnic identities, of their communities, and of their world;</p> <p>4. communicating in culturally and linguistically responsive ways;</p> <p>5. providing learning experiences that are designed for neurodiversity with multiple ways for students to access learning;</p> <p>6. using educational and assistive technology to reduce barriers to learning and heighten student engagement;</p> <p>7. cultivating student agency by providing multiple ways for students to engage with and demonstrate their new learning;</p> <p>8. emphasizing an inquiry-driven approach to all units of study and bringing real-world issues into the classroom;</p> <p>9. heightening the relevance and importance of learning objectives and providing mastery-oriented feedback;</p> <p>10. employing the use of data to adapt pedagogy to unique student needs and incorporate student feedback into instructional design and curricula;</p> <p>11. teaching students how to develop metacognitive and social emotional skills that improve their academic outcomes;</p>	
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		<p>12. designing learning experiences that improve students’ wellbeing, including opportunities for physical movement in the classroom; and</p> <p>13. fostering a positive classroom culture using restorative practices where appropriate.</p> <p>(c) Curriculum Content. Curriculum shall be equitable, anti-racist, culturally responsive, anti-discriminatory, inclusive and accessible to families and community members.</p> <p>1. All approved schools shall enable students to engage annually in rigorous, relevant, and comprehensive learning opportunities that are socially and culturally responsive and allow them to demonstrate proficiency in ethnic and social equity studies.</p> <p>2. The course of study offered shall be adequate to meet the educational purposes of the school and to provide a minimum course of study that is age and ability appropriate.</p> <p>(d) Special Services. Schools shall maintain special services necessary to meet the requirements of a minimum course of study and its educational purposes, including library services, administrative services, guidance and counseling services, and a</p>	<p>Mirrors 2120.5 (last sentence of first paragraph)</p> <p>Parallels 2120.5, second paragraph “Each school shall enable students to engage annually in rigorous, relevant, and comprehensive learning opportunities that are socially and culturally responsive and allow them to demonstrate proficiency in ...”</p> <p>Mirrors 2120.5(h): “ethnic and social equity studies.”</p> <p>Previously 2227.2</p> <p>Previously 2227.3</p>
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		system of records by which student progress may be assessed.	
		<b>2223.3.4. Maintaining Safe and Equitable Access to Educational Opportunities</b>	
		<p>Approved schools are expected to provide for the safety, protection, and equitable treatment of students and school personnel in accordance with state and federal laws. School governance boards and leadership teams shall make every effort to remain current in understanding and implementing recognized best practices and procedures in this regard and shall also take care to remain compliant with laws adopted after the promulgation of these rules. At a minimum, each approved school shall develop and maintain the following:</p> <p>(a) a comprehensive plan for responding to student misbehavior, as required by 16 V.S.A. §1161(a), that it is clear and consistently enforced to address student behavior, language, classroom attendance, clothing, and treatment of property, as well as consequences for violations of policy;</p> <p>(b) harassment, hazing, and bullying prevention policies pursuant to 16 V.S.A. §166(e) and procedures for dealing with harassment, hazing, and bullying of students pursuant to chapter 9 subchapter 5 of Title 16 of the Vermont Statutes Annotated;</p>	<p>New Language</p> <p>Incorporates 16 V.S.A. §1661(a); Parallel with EQS 2122.1: “Each school’s comprehensive plan for responding to student misbehavior, as required by 16 V.S.A. § 1161a(a), shall address student behavior, language, classroom attendance, clothing, and treatment of property, as well as consequences for violations of policy, and shall be clear and consistently enforced.” Incorporates 16 V.S.A. §166(e)</p>



		<p>(c) practices that comply with the requirements of 16 V.S.A. §253 - §255 relating to confidentiality and maintenance of records, criminal record checks, and checks of the Child Protection Registry and the Vulnerable Adult Abuse, Neglect, and Exploitation Registry;</p> <p>(d) procedures that do not permit any person listed on the State of Vermont, Department of Public Safety, Vermont Crime Information Center Sex Offender Registry to work at the school as an employee, volunteer, or work study student pursuant to 16 V.S.A §260;</p> <p>(e) practices that ensure that adults employed in the school receive orientation, information, or instruction on the prevention, identification, and reporting of child sexual abuse, as defined in 33 V.S.A. §4912(8), and sexual violence and opportunities for parents, guardians, and other interested persons to receive the same information as required by 16 V.S.A. §563(a);</p> <p>(f) opportunities that provide access for eligible students to participate in dual enrollment, accept credit awarded, collect enrollment data, and provide support to students in accessing the opportunity and otherwise transitioning to postsecondary enrollment pursuant to 16 V.S.A. §944;</p> <p>(g) a procedure to providing the names and addresses of publicly funded students enrolled at the approved school to the school's regional career technical education (CTE) center;</p>	<p>Updated to include changes in law and incorporates 16 V.S.A. §253,254</p> <p>Incorporates 16 V.S.A. §260</p> <p>Incorporates 16 V.S.A. §563(a)</p> <p>Incorporates 16 V.S.A. §944</p> <p>Incorporates 16 V.S.A. §1541(a)</p>
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		<p>(h) an enrollment policy designed to serve children with disabilities;</p> <p>(i) a concussion management action plan and information that is developed, distributed, and acknowledged by required personnel and appropriate training for athletic coaches in the recognizing and managing the risks of concussions and other head injuries in accordance with 16 V.S.A. §1431;</p> <p>(j) comply with requirements of 18 V.S.A. §1120 et seq., regarding the immunization of students against disease;</p> <p>(k) maintain a policy pursuant to 16 V.S.A. §912 regarding a student’s right to be excused from participating in any lesson, exercise, or assessment requiring the student to participate in or observe the dissection or harm of an animal;</p> <p>(l) provide students access to menstrual products at no cost pursuant to 16 V.S.A. §1432;</p> <p>(m) comply with supporting and protecting the rights of married, pregnant, or parenting students pursuant to 16 V.S.A. §1073;</p> <p>(n) permit students with life-threatening allergies or with asthma to possess and self-administer emergency medication in accordance with 16 V.S.A. §1387;</p>	<p>Incorporates 2226.3</p> <p>Incorporates 16 V.S.A. §1431</p> <p>Incorporates 18 V.S.A. §1120</p> <p>Incorporates 16 V.S.A. §912</p> <p>Incorporates 16 V.S.A. §1432</p> <p>Incorporates 16 V.S.A. §1073</p> <p>Incorporates 16 V.S.A. §1387</p>
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		<p>(o) an all-hazards emergency operations plan consistent with 16 V.S.A. §1480;</p> <p>(p) fire and emergency preparedness drills pursuant to 16 V.S.A. §1481;</p> <p>(q) a written building access control and visitor management policy consistent with 16 V.S.A. §1484;</p> <p>(r) practices that promote an equitable, just, and inclusive community of adults and students, foster a culture of learning, and inspire students to respect and value diversity in its many forms;</p> <p>(s) after July 1, 2025, behavioral threat assessment policies, procedures and reporting mechanisms consistent with 16 V.S.A. §1485; and</p> <p>(t) practices to remain aware of and compliant with any rule or regulation related to the safety, protection, and equitable treatment of students and school personnel.</p>	<p>Updated to reflect Act 29</p> <p>Incorporates 16 V.S.A. §1481</p> <p>Updated to reflect Act 29</p> <p>New Language to align with requirement for recognizing accrediting agencies (2227) and reflects the intent of Act 1</p> <p>Updated to reflect Act 29</p> <p>New Language</p>
		<p><b>2223.3.5 Other Required Activities</b></p>	
		<p>In addition to activities outlined in Subsection 2223.3.4 (Maintaining Safe and Equitable Access to Educational Opportunities), each approved school shall: (a) provide to the parent or guardian responsible for each of its students, prior to accepting any money for a student, an accurate statement in writing of its status under 16 V.S.A. §166(b). Failure to comply with this provision may</p>	<p>Incorporates 16 V.S.A. §166(b)(3); previously in 2226.11</p>

		<p>create a permissible inference of false advertising in violation of 13 V.S.A. §2005;</p> <p>(b) maintain a register of the daily attendance of each of its enrolled students;</p> <p>(c) provide to the Secretary on October 1 of each year the names, genders, dates of birth, and addresses of its enrolled students. Within seven days of the termination of a student's enrollment, the approved school shall notify the Secretary of the name and address of the student. The Secretary shall notify the appropriate school officials as provided in 16 V.S.A. §1126;</p> <p>(d) maintain an operating schedule that includes a total number of instructional hours each year that is not less than that required of a public school serving the same grades;</p> <p>(e) comply with legal requirements concerning nondiscriminatory school branding;</p> <p>(f) measure attainment of standards for student performance for publicly funded students, as required under 16 V.S.A. 164(9), and provide data related to the assessments to the Secretary as required by 16 V.S.A. §166(g); schools are encouraged to provide the data to local education agencies;</p> <p>(g) provide information to sending school districts related to reporting on weighting categories, as requested, pursuant to 16 V.S.A. §4010(c);</p>	<p>Previously in 2227.9</p> <p>Incorporates 16 V.S.A. §166(b)</p> <p>Previously in 2227.10</p> <p>Incorporates 16 V.S.A. §2227.13</p> <p>Incorporates 16 V.S.A. §166(g); adds encouragement to provide data to LEA in support of LEA duties outlined in EQS</p> <p>Incorporates 16 V.S.A. §4010(c)</p>
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		<p>(h) comply with 16 V.S.A. §12 requiring select school officials to subscribe to an oath or affirmation to support the U.S. Constitution, Vermont Constitution, and all state and federal laws;</p> <p>(i) conduct exercises in commemoration of the birth, life, and services of Abraham Lincoln, pursuant to 16 V.S.A. §907;</p> <p>(j) policies related to record maintenance and retention that, at minimum, provide for the timely and confidential disposition of student records in the event of the school's closure; and</p> <p>(k) comply with other applicable state and federal requirements pertaining to approved schools.</p>	<p>Incorporates 16 V.S.A. §12</p> <p>Incorporates 16 V.S.A. §907</p> <p>Previously in 2227.14</p> <p>Refers to previous 2223.8(a)(2)</p>
		<b>2223.3.6 Independent Schools Operating a Boarding Program</b>	
		To be approved under these rules, an independent school that operates a boarding program, enrolls students as boarding students, or operates a residential treatment program shall be accredited by a state or regional agency recognized by the Board for accrediting purposes or shall be licensed as a residential childcare facility by the Department for Children and Families. This requirement does not apply to an independent school that enrolls only day students.	Previously in 2227
	<b>2223.4 Review.</b>	<b>2223.4 Annual Compliance Assurance</b>	
Replaced with new language in 2224.3	The Secretary shall designate a date for action by the Board. Officials of the school shall be notified of this date.	(a) Each approved school shall attest to continued compliance with applicable requirements of this rule and federal and state law on or before January 15 <sup>th</sup> of each year.	New Language

		<p>(b) In consultation with the Board, the Agency shall prepare and make available a simplified form to be used to meet the requirement of this section, that shall be made available to schools at least 90 days from the date it is due. The form shall include the school's attestation, and necessary supporting evidence, that it meets the requirements of Subsection 2223.2 (Nondiscrimination Requirements for Approved Schools) using the self-assessment tool indicated in that subsection, and an assurance of compliance with Subsection 2229.1 – 2229.5 (( Enrollment: Requirements for Approved Independent School, Students, and LEAs),(Staffing), (Assurances), (Procedure for Ensuring the Provision of Special Education Services to Publicly Funded Students in Approved Independent Schools), (Out-of-State Programs)), if applicable. Incomplete or modified forms will not be accepted as meeting the requirement set forth in subsection (a) above. Schools may request and the Secretary may grant an extension of up to 45 days to submit the annual compliance assurance form for good cause shown, if the request is submitted 14 or more days before the due date.</p> <p>(c) If a school fails to submit an acceptable annual compliance assurance form by the date set by the Agency, the school will be considered out of compliance with subsection (a) above. The Secretary shall immediately notify the school of its noncompliance and the school shall have five days to come into compliance. If the school fails to submit an acceptable compliance assurance form to the Agency</p>	
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		within five days of notification by the Secretary, the Secretary shall launch an investigation pursuant to Subsection 2226.2.2 (Investigations; Due Process Hearings), which shall be promptly followed by a due process hearing set forth in (e) of the same Subsection. If, after a hearing, the Board determines that the school intentionally violated this subsection pursuant to 2226.3(a) (Revocation or Suspension of Approval), it shall decide whether to revoke, suspend, or impose conditions on the school's approval status.	
	<b>2223.5 Renewal.</b>	<b>2223.5 Confidential Information</b>	
Incorporated into 2224.8	Not less than six months prior to expiration of a school's approval, the Secretary shall send an application packet and a letter notifying the school when the site visit will occur and that the completed application must be received from the school not later than 30 days prior to the scheduled site visit.	Information provided by a school under these rules that is not already in the public domain is exempt from public inspection and copying under the Public Records Act and shall be kept confidential according to 16 V.S.A. § 166(b)(8).	Previously 2223.8(g)
	<b>2223.6 Extension.</b>		
Now in 2224.6	Approval of a school completing a timely application for further approval shall extend until the Board acts on further approval.		
	<b>2223.7 Termination.</b>		
Now in 2226.1	Approval of an independent school that fails to complete timely application for further approval shall terminate on the date specified in the most recent approval action.		
	<b>2223.8 Revocation or Suspension of Approval.</b>		
Now in 2226.2 and 2226.3	Prior to recommending revocation or suspension of approval, the Secretary shall initiate a formal investigation pursuant to rule 2223.9 (Complaints; Investigations). Following the formal investigation, the Secretary shall share the findings with the Council of Independent Schools. The Council shall		

<p>Now in 2226.2.2 (f). Changes Board to Secretary to comport with 16 V.S.A. §166(b)(8).</p>	<p>consider the findings from the investigation and the Secretary's proposed resolution and issue a written opinion on the same. If, after receiving the Council's opinion, the Secretary determines that revocation or suspension of approval is warranted, the Secretary shall notify the State Board of the recommendation and provide notice to the school. The State Board shall hold a hearing pursuant to 3 V.S.A. chapter 25 to consider the Secretary's recommendation.</p> <p>(a) After providing an opportunity for hearing, the Board may revoke, suspend, or impose conditions on the approval of an approved independent school for:</p> <p>(1) Failure to demonstrate that the school has the resources required to meet its stated objectives;  (2) Failure to comply with statutory requirement or the Board's rules for approved independent schools;  (3) Failure to report any of the financial events listed in (b) below; or  (4) Failure to make an annual enrollment report to the Secretary as required by 16 V.S.A. § 166.(b)(4).</p> <p>(b) An approved independent school shall report to the Secretary within five days after its knowledge of any of the following events, unless the failure is de minimus:</p> <p>(1) The school's failure to file its federal or State tax returns when due, taking into account permissible extensions of time;  (2) The school's failure to meet its payroll obligations as they are due or pay federal or State payroll tax obligations when due;</p>		
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<p>Changed to Secretary (see above), now in 2226.2.2</p> <p>Changed to Secretary (see above), now in 2226.2.2</p>	<p>(3) The school's failure to maintain required retirement contributions;</p> <p>(4) The school's use of designated funds for nondesignated purposes;</p> <p>(5) The school's inability to fully comply with the financial terms of its secured installment debt obligations over a period of two consecutive months, including the school's failure to make interest or principal payments as they are due or to maintain any required financial ratios;</p> <p>(6) The withdrawal or conditioning of the school's accreditation on financial grounds by a private, State or regional agency recognized by the Board for accrediting purposes; or</p> <p>(7) The school's insolvency as defined in 9 V.S.A. § 2286.(a).</p> <p>(c) If the State Board reasonably believes that an approved independent school lacks the financial capacity to meet its stated objectives during the period of its approved status, the Board shall so notify the school in writing and shall act in accordance with the procedure set forth in 16 V.S.A. § 166.(b)(8)(B).</p> <p>(d) If the State Board, after having provided the school a reasonable opportunity to respond to the Board's notification, does not find that the school has satisfactorily responded or demonstrated its financial capacity, the Board may establish a review team that, with the consent of the school, includes a member of the Council of Independent Schools, to:</p>		
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	<p>independent schools, the Secretary should first determine whether the matter can be resolved through informal means, such as by provision of regulatory guidance, and confirm that corrective action is taken by the school. If the Secretary determines that informal means are not appropriate to the violation or if the matter has not been resolved informally, the Secretary may place the approved independent school on probation.</p>		
<p>Now in 2226.2.2</p>	<p>(b) At any time, the Secretary may convene a review team to conduct a formal investigation without first attempting an informal resolution or imposing probation.</p>		
<p>Now in 2226.2.2</p>	<p>(c) An approved independent school may appeal the imposition of probation to the State Board by requesting a hearing as provided above.</p>		
<p>Now in 2226.2.2</p>	<p>(d) The Secretary shall maintain a register of all complaints that result in imposition of probation or a formal investigation, which shall be a public record and which shall include the general nature of the complaint and action taken by the Secretary.</p>		
<p>Now in 2226.2.2</p>	<p>(e) Formal Investigations  (1) The school shall receive notification of the complaint unless contraindicated by the particular facts.  (2) If the Secretary determines that a formal investigation is warranted, the Secretary shall appoint a review team of at least two persons including a member of the Council of Independent Schools. The team will conduct the investigation and</p>		

<p>Now in 2226.2.1</p>	<p>will inform the Secretary and the school of the results. The process in SBE Rule 2223.8 shall then apply.</p> <p>(3) Reports of drug or alcohol use shall be referred to the state's attorney for the county in which the school is located. Reports of child abuse or neglect shall be reported to the Department for Children and Families. Reports concerning the safety of facilities, water supply, electricity, plumbing, or waste disposal systems shall be referred to the appropriate agency.</p>		
	<p><b>Section 2224 Reciprocity for Approved Independent Schools and Approved Independent Schools Ineligible to Receive Public Funds.</b></p>	<p><b>Section 2224. Application and Reapplication for Approval; Approval Process</b></p>	<p>Rewrites the process to reflect current practice with added structure. Provides clarity to current rules. Organized to distinguish between “standard” and “accredited” school pathways. New/updated forms and obligations to notify schools may be required of Secretary/Agency.</p>
<p>Rewritten and now in 2227</p>	<p>Approval may be granted without committee evaluation and the approval process in the case of any school accredited by a state or regional agency recognized by the State Board for accrediting purposes. In addition to the accrediting agencies listed in SBE Rule 7320, which the Board shall continue to recognize until July 1, 2024, the State Board recognizes the Association of Independent Schools in New England and the New England Association of Schools and Colleges. Any accreditation from a recognized accrediting agency that is valid for more than five years must be supplemented with an interim report from the accrediting agency which should be submitted to the</p>	<p>Approval shall be recommended for an independent school offering elementary or secondary education that provides a minimum course of study pursuant to 16 V.S.A. § 906 and that substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools. A school meeting the requirements of Section 2223 (Requirements to Operate as an Approved Independent School or an Approved Independent School Ineligible to Receive Public Funds) and this Section, but not Section 2229 (Approval to Receive Public Tuition; Special Education Approval), may be recommended for approval but may not receive public tuition.</p>	<p>Reflects 16 V.S.A. §166(b).</p> <p>New clarifying language.</p>

	<p>Agency by the accrediting agency or the school during the last year of its five-year approval. This interim report must provide such information as is necessary to assure the State Board that the school is meeting the approval standards. If such proof of compliance with approval standards cannot be shown, then the school must undergo the approval process. A school accredited by a state or regional agency recognized by the State Board school shall notify the Agency within five days of a change to its accreditation.</p>		
		<p><b>2224.1 Standard Application Process</b></p>	
		<p>An independent school seeking approval under these rules shall apply to the Secretary using a form prepared by the Secretary to meet the requirements of this section. At a minimum, the application shall solicit information containing or describing the school’s basic information, mission statement, enrollment policy, curriculum, methods of instruction, evaluation procedures, special services provided, governance information, evidence of compliance with local, state, and federal laws and regulations, staffing and instructional strategies, fiscal practices and evidence of financial capacity, operational information, appropriate assurances or disclosures, a request to receive public funds, if applicable, and any other information that the Secretary, Board, or review committee may deem important in considering whether the school meets requirements for approval. The school shall also submit a complete, unmodified annual assurance attestation form described in Subsection 2223.4 (Annual Compliance Assurance).</p>	<p>Incorporates 2223 and 2223.3</p> <p>New clarifying language.</p> <p>New requirement (previously stated).</p>

		<b>2224.1.2 Standard Application Review, Visit, Report, and Recommendation</b>	
		Upon receipt of a complete application, the Secretary shall appoint a review committee of at least two persons. The review committee shall review the application materials and visit the school. To the extent possible, the visit shall be coordinated by the Secretary with other agencies of state government that inspect such facilities. The review committee shall examine the application materials and consider findings from its site visit and submit a report, including a written initial recommendation regarding approval, to the Secretary, and a copy sent to the applicant school. The applicant shall be given 30 days to respond before the Secretary makes a final recommendation regarding approval to the Board. The Secretary's final recommendation shall contain the findings of other agencies of state government that inspect such facilities	Incorporates previous 2223, 2223.1, 2223.2
		<b>2224.2 Accredited Independent School Application Process</b>	
		In the case of any independent school seeking approval that has been accredited within the last five years by a recognized accrediting agency pursuant to Section 2227 (Recognized Accrediting Agency), an abbreviated application and review process described in this subsection may be used.	Restates 16 V.S.A. §166(b) and incorporated parts of previous 2224.
		<b>2224.2.1 Accredited Independent School Application</b>	
		An independent school seeking approval under this subsection shall apply to the Secretary using a form prepared by the Secretary. The application shall require the school to provide evidence of accreditation from the recognized accrediting	New Language. Clarifying practice and including new requirement for form and compliance assurance.

		agency, basic information about the school, assurances of compliance with state specific requirements set forth in Subsections 2223.3.4 (Maintaining Safe and Equitable Access to Educational Opportunities) and 2223.3.5 (Other Required Activities) or state law, and a request to receive public funds, if applicable. The school shall also submit a complete, unmodified annual assurance attestation form described in Subsection 2223.4 (Annual Compliance Assurance).	
		<b>2224.2.2 Accredited Independent School Application Review, Report, and Recommendation</b>	
		Upon receipt of a complete application, the Secretary shall review the application materials and conduct an independent review of the school's compliance with the nondiscrimination provisions of these rules and applicable law. The Agency shall submit a report including a written initial recommendation regarding approval, to the applicant school. The applicant shall be given 30 days to respond before the Secretary makes a final recommendation regarding approval to the Board. A comprehensive review of programs and operations by a review committee, including a site visit, will not be required.	New language. Clarifying intent that accredited school applications are also reviewed by Agency and provided with 30-day response period.
		<b>2224.3 Review</b>	
		The Secretary shall confer with the Chair of the Board on a regular basis to ensure effective coordination in the review and approval of applications and reapplications to promote efficiency in scheduling and expediency in decision-making.	New Language. Replace 2223.4
		<b>2224.4 Board Approval</b>	Follows previous approval process in 2227; Board makes specific findings.
		The Board shall review each application for approval and consider the recommendation of the Secretary.	New clarifying language.

		<p>The Board shall make findings listed in (a), (b), and (c) below, as applicable, prior to approval and may set additional conditions for approval in the exercise of its judgment.</p> <p>(a) The Board shall make the following findings prior to approval of any school that submitted a standard application:</p> <ol style="list-style-type: none"> <li>1. The description of the school in the approval application is accurate;</li> <li>2. The course of study offered is adequate to meet the educational purposes of the school and to provide a minimum course of study that is age and ability appropriate;</li> <li>3. The school has available support services necessary to meet the requirements of a minimum course of study and its educational purposes, including library services, administrative services, guidance and counseling services, and a system of records by which student progress may be assessed;</li> <li>4. The school's description of its enrollment sufficiently state and describe how it is designed to serve children with disabilities.</li> <li>5. The school has classroom, laboratory, library, and other facilities necessary to operate its program;</li> </ol>	<p>Previously 2227 (including numbered list below)</p> <p>Previously 2227.1</p> <p>Previously 2227.2</p> <p>Previously 2227.3</p> <p>Previously 2226.3</p> <p>Previously 2227.4</p> <p>Previously 2227.5</p>
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		<p>6. The school employs professional staff who are qualified by training and experience in the areas in which they are assigned as measured by the following:</p> <p style="padding-left: 40px;">A. For teachers, a minimum of a bachelor's degree in their field of instruction or substantially equivalent time in training and experience in their field of instruction.</p> <p style="padding-left: 40px;">B. For all professional staff, relevant experience and/or training in other programs not related to teaching or administrative duties to which they are assigned;</p> <p>7. The school has an adequate program of continuing professional staff development as demonstrated in the application;</p> <p>8. The school employs a sufficient number of professional staff for the population served;</p> <p>9. The school substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools including nondiscrimination in admissions and operations and requirements relative to its facilities, fire drills, and the immunization of its students against disease;</p>	<p>Previously 2227.5.1</p> <p>Previously 2227.5.2</p> <p>Previously 2227.6</p> <p>Previously 2227.7</p> <p>Previously 2227.8</p>
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		<p>10. The school maintains a register of the daily attendance of each of its enrolled students;</p> <p>11. The school maintains an operating schedule that includes a total number of instructional hours each year that is not less than that required of a public school serving the same grades;</p> <p>12. The school has the financial capacity to carry out its stated objectives for the period of approval, evidenced by one of the following:</p> <p>(A) An audit letter by a certified accounting firm from the present or prior year describing financial capacity;</p> <p>(B) A notarized letter summarizing the financial status within the present or prior fiscal year signed by the board of directors or governing body;</p> <p>(C) An audit from the present or prior fiscal year performed by a certified accounting firm; or</p> <p>(D) A statement of financial capacity of a private, state, or regional agency recognized by the State Board for accrediting purposes concerning the school's financial capacity;</p> <p>13. The school complies with the requirements of 16 V.S.A. § 253-255 relating to confidentiality and maintenance of records, criminal record checks, and checks of the Child Protection Registry and the Vulnerable Adult Abuse, Neglect, and Exploitation Registry;</p>	<p>Previously 2227.9</p> <p>Previously 2227.10</p> <p>Previously 2227.11</p> <p>Previously in 2226.9</p> <p>Previously 2227.12</p>
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		<p>14. The school complies with legal requirements concerning nondiscriminatory school branding;</p> <p>15. The school has adopted a policy on record maintenance and retention that, at minimum, provides for the timely and confidential disposition of student records in the event of the school's closure; and</p> <p>16. the school promotes an equitable, just, and inclusive community of adults and students, foster a culture of learning, and inspire students to respect and value diversity in its many forms; and</p> <p>17. The school has attested to its compliance with Vermont-specific laws and regulations by submitting a complete, unmodified annual compliance assurance form with its application.</p> <p>(b) The Board shall make the following findings prior to approval of any school that submitted an accredited independent school application:</p> <p>1. The school is accredited and deemed in good standing by a recognized accrediting agency under Section 2227 (Recognized Accrediting Agencies) within the last five years;</p> <p>2. The application and materials submitted sufficiently demonstrate that the school provides a minimum course of study pursuant to 16 V.S.A. § 906; and</p>	<p>Previously 2227.13</p> <p>Previously 2227.14</p> <p>New Language to ensure that unaccredited schools also are found to be in compliance with this requirement.</p> <p>New language requiring compliance check &amp; verification.</p>
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		<p>3. The school has attested to its compliance with Vermont-specific laws and regulations by submitting a complete, unmodified annual compliance assurance form with its application, and the Agency has independently certified compliance with the nondiscrimination provisions of these rules and applicable law.</p> <p>(c) Prior to approving a school’s application to receive public funds pursuant to Subsection 2229.6, the Board shall consider the recommendation of the Secretary and find that the school meets all requirements necessary for approval under these rules and applicable sections of Title 16.</p>	<p>New language requiring compliance check &amp; verification.</p> <p>New language to identify the finding the Board must make in approving eligibility to receive public funds.</p>
		<b>2224.5 Continued Approval</b>	
		Approval of a school completing a timely application for further approval shall extend until the Board acts on further approval.	Previously 2223.6
		<b>2224.6 Continued Accreditation</b>	
		A school accredited by a recognized accrediting agency pursuant to Section 2227 (Recognized Accrediting Agencies) shall notify the Agency within five days of any change to its accreditation status.	Previously in 2224
		<b>2224.7 Reapplication</b>	
		The Secretary shall notify each school of the date that its approval status will expire not less than six months prior to its expiration and shall provide the date by which its application for reapproval is due to the Secretary. Schools that wish to remain approved without interruption shall follow the Standard Application Process or Accredited School Application Process as it applies to them. The	<p>Previously in 2223.5</p> <p>New Language.</p>

		Secretary may extend the reapplication period for good cause.	
		<b>2224.8 Interim Compliance Report from Accrediting Agency</b>	
		For any school accredited by a recognized accredited agency under Section 2227 (Recognized Accrediting Agencies) seeking reapplication under 2224.7 (Reapplication) whose accreditation period exceeds five years, a supplemental interim report from the accrediting agency must be submitted during the last year of the school's five-year approval by the Board and must provide information necessary to assure the Board that the school meets the approval standards. If such proof of compliance with approval standards cannot be shown, then the school must undergo the application process described in Subsection 2224.1.1 (Standard Application) in seeking continued approval.	Previously 2224; clarifying language.
	<b>Section 2225 Tuition from Public Funds.</b>	<b>Section 2225. Length of Approval</b>	
		The Board may grant initial approval for not more than two years, and renewal of approval for not more than five years.	Previously 2228
	<b>2225.1 Tuition for Independent Schools in Vermont.</b>		
Now in 2228.1	Tuition shall not be paid from public funds to any independent elementary or secondary school in Vermont unless the school satisfies the requirements in SBE Rule 2226 (Application), SBE Rule 2227 (Approval), and SBE Rule 2229 (Approval to Receive Public Tuition, Special Education Tuition). Notwithstanding this prohibition, tuition may be paid from public funds in cases where:		

	(a) There is an order from a court or from a due process hearing pursuant to SBE Rule 2365.1.6 requiring such payment, or  (b) The Secretary has approved an exception for a placement in an independent school pursuant to SBE Rule 2230.1.		
	<b>2225.2 Tuition for Out of State Schools</b>		
Now 2228.2	Tuition to be paid to an independent school in another state shall be made in accordance with 16 V.S.A. § 828.		
This section was significantly rewritten. Most parts were incorporated into new section "requirements" (2223). New "application" section speaks mainly to process for applying.	<b>Section 2226 Application for Approved Independent Schools and Approved Independent Schools Ineligible to Receive Public Funds.</b>	<b>Section 2226. Termination; Procedures for Revoking or Suspending Approval</b>	Reorganization; Grouping subject matter.
	An application for initial approval or renewal of approval shall contain the following:		
Deleted (may be included in Secretary's school Approval Application Form at their discretion).	<b>2226.1</b> The name and address of the school.	<b>2226.1 Termination</b>	
		Approval of an independent school that fails to complete a timely application for reapproval shall terminate on the date specified in the most recent approval action, provided that the school received notification of the expiration of the approval period required in Section 2224.7 (Reapplication).	Previously 2223.7; clarifies notice requirement.
Deleted (may be included in Secretary's school Approval Application Form at their discretion).	<b>2226.2</b> A statement of the school's philosophy and purpose.	<b>2226.2 Complaints; Investigations; Due Process Hearings</b>	
		<b>2226.2.1 Complaints</b>	

		<p>(a) Complaints against an approved school must be made in writing to the Secretary. The complaint must contain enough detail to show that the school substantially failed to comply with the minimum course of study required, failed to maintain resources required to meet its stated objectives, or failed to comply with statutory requirements or the Board's rules for approved schools.</p> <p>(b) Reports of drug or alcohol use shall be referred to the state's attorney for the county in which the school is located. Reports of child abuse or neglect shall be reported to the Department for Children and Families. Reports concerning the safety of facilities, water supply, electricity, plumbing, or waste disposal systems shall be referred to the appropriate agency.</p>	<p>New clarifying language about form of complaint; substance restated from 16 V.S.A. 166(b).</p> <p>Previously in 2223.9(e)(3)</p>
		<p><b>2226.2.2 Investigations; Due Process Hearing</b></p>	
		<p>(a) The Secretary shall conduct an initial investigation of reports or complaints related to the requirements of this rule and laws that apply to approved schools and in cases of noncompliance with the annual compliance assurance requirement set forth in Subsection 2223.4 (Annual Compliance Assurance). The school shall receive notification of the complaint and investigation unless contraindicated by the particular facts. If, following an initial investigation, the Secretary finds a violation of rules or laws that apply to approved schools, the Secretary should first determine whether the matter can be resolved through informal means, such as by provision of regulatory guidance, and confirm that corrective action is taken by the school.</p>	<p>Previously 2223.9; clarifies jurisdiction over complaints made under this rule, not solely approval standards. Previously 2223.9(e)(1)</p> <p>Previously 2223.9</p> <p>Previously 2223.9; adds notification of Board (probation); Previously 2223.9(c)</p>

		<p>(b) If the Secretary determines that informal means are not appropriate to the violation or if the matter has not been resolved informally, the Secretary may place the approved school on probation and notify the Board of this action. An approved school may appeal the imposition of probation to the Board by requesting a hearing as provided in Subsection 2226.3 (Revocation or Suspension of Approval).</p> <p>(c) At any time, the Secretary may conduct a formal investigation without first attempting an informal resolution or imposing probation.</p> <p>(d) If the Secretary determines that a formal investigation is warranted, the Secretary shall appoint a review team of at least two persons that, with the consent of the school, shall include a member of the Council of Independent Schools. The team shall conduct a school visit and shall obtain from the school such information or documentation necessary to perform its assessment. The review team will inform the Secretary and the school of that results of its visit and assessment. Secretary shall share the findings with the Council of Independent Schools. The Council shall consider the findings from the investigation and the Secretary's proposed resolution and issue a written opinion that shall include minority opinions, if applicable, on the same.</p> <p>(e) If, after receiving the Council's opinion, the Secretary determines that revocation or suspension of approval is warranted, the Secretary shall notify the Board of the recommendation and provide notice to the school. The Board shall hold a hearing</p>	<p>Previously 2223.9(b)</p> <p>Previously 2223.9(e)(2)</p> <p>Incorporates and merges with 2228(c)</p> <p>References requirement in 16 V.S.A. §166 re: Council consultation and opinions.</p> <p>References requirement in 16 V.S.A. §166 re: Council consultation and opinions.</p> <p>Incorporated 2223.8</p> <p>Restates 16 V.S.A. 166(b)(8)</p>
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		<p>pursuant to 3 V.S.A. chapter 25 to consider the Secretary's recommendation.</p> <p>(f) If the Secretary reasonably believes that an approved school lacks the financial capacity to meet its stated objectives during the period of its approved status, including by means of self-report any of the financial events listed in 2223.3.2(b) (Financial Capacity, Solvency, and Stability), the Secretary shall so notify the school in writing and shall provide the school a reasonable opportunity to respond. If the Secretary does not find that the school has satisfactorily responded or demonstrated its financial capacity, a formal investigation may be initiated in accordance with (d) above, pursuant to 16 V.S.A. §166(b)(8).</p> <p>(g) The Secretary shall maintain a register of all complaints that result in imposition of probation or a formal investigation, which shall be a public record, and which shall include the general nature of the complaint and action taken by the Secretary.</p>	Former 2223.9(d)
Now 2224.4(a)(4) and 2223.3.4(g)	<b>2226.3</b> A description of the school enrollment including a statement of how it is designed to serve children with disabilities.	<b>2226.3. Revocation or Suspension of Approval</b>	
		<p>(a) After providing an opportunity for hearing pursuant to Subsection 2226.2.2 (Investigations; Due Process Hearing) above, the Board may revoke, suspend, or impose conditions on the status of an approved school, including its ability to receive public funds for:</p> <p style="padding-left: 40px;">1. failure to demonstrate that the school has the resources required to meet its stated</p>	Clarifies that the Board has the power to revoke and suspend school approval (overall) and may also revoke or suspend a school's approval to receive public funds

		<p>objectives;</p> <p>2. failure to comply with a statutory requirement or the Board's rules for approved schools, including failure to submit an annual compliance assurance;</p> <p>3. failure to report any of the financial events listed in 2223.3.2(b) (Financial Capacity, Solvency, and Stability);</p> <p>4. failure to make an annual enrollment report to the Secretary as required by 16 V.S.A. § 166(b)(4).</p> <p>(b) In considering whether an independent school lacks financial capacity to meet its stated objectives during the period of its approved status and what actions to take, the Board may consult with, and draw on the analytical resources of, the Vermont Department of Financial Regulation.</p>	Includes specific reference to new requirement.
Deleted (may be included in Secretary's school Approval Application Form at their discretion).	<b>2226.4</b> A description of the plan of organization for the school including its governance, faculty, and student body, and the names and addresses of the governing board.		
Now in 2223.3.3	<b>2226.5</b> A description of the curriculum, methods of instruction, evaluation procedures and special services that the school has designed to achieve its educational objectives and to provide a minimum course of study as defined in 16 V.S.A. § 906.		

<p>Now in 2223.2</p> <p>Now in 2223.2.1</p> <p>Now in 2223.2.1 and 2223.4 and 2224.4</p> <p>Now in 2223.3.1 and 2224.4</p>	<p><b>2226.6</b> Demonstration that the school substantially complies with all statutory requirements for approved independent schools, with documentation of the following:</p> <p>(1) A statement of nondiscrimination, posted on the school's website and included in the school's application materials, that is consistent with the Vermont Public Accommodations Act, Title 9 Vermont Statutes Annotated, Chapter 139 and the Vermont Fair Employment Practices Act, Title 21 Vermont Statutes Annotated, Chapter 5, Subchapter 6.</p> <p>(2) An assurance, signed by the Head of School, that the school complies with the Vermont Public Accommodations Act in all aspects of the school's admissions and operations.</p> <p>(3) A description of physical facilities including plant, materials, and equipment and assurances that the facilities meet all applicable State and federal requirements.</p>		
<p>Now in 2222.3.4 and 2224.4</p>	<p><b>2226.7</b> Evidence of compliance with local, State, and federal requirements pertaining to the health and safety of students.</p>		
	<p><b>2226.8</b> Statements regarding professional staff including:</p>		
	<p><b>2226.8.1 Professional Staff qualifications.</b></p>		
<p>Now in 2223.3.3 and 2224.4</p>	<p>(1) A job description for each position or a statement describing training, experience, and degree(s) required for each position.</p> <p>(2) A resume, vita, or description of appropriate qualifications for each current staff member.</p> <p>(3) Current assignment of each professional staff member.</p>		

	<b>2226.8.2 Professional Staff Development.</b>		
Now in 2223.3.3 and 2224.4	(1) A general statement of the institution's expectations for professional growth of staff. (2) A statement describing the school's inservice training and financial and other support given to staff for professional development. (3) A description of professional development in the prior two years.		
	<b>2226.8.3 Professional Environment.</b>		
Now in 2223.3.3 and 2224.4	(1) A list of staff and length of service. (2) A description of staff meetings. (3) A description of other staff duties that are not related to teaching or administration duties.		
Now in 2223.3.2 and 2224.4	<b>2226.9</b> Evidence of financial capacity, which may be shown by one of the following:		
Now in 2223.4(a)(11)	(1) An audit letter by a certified accounting firm from the present or prior year describing financial capacity; (2) A notarized letter summarizing the financial status within the present or prior fiscal year signed by the board of directors or governing body; (3) An audit from the present or prior fiscal year performed by a certified accounting firm; or (4) A statement of financial capacity of a private, state, or regional agency recognized by the State Board for accrediting purposes concerning the school's financial capacity.		
Deleted (may be included in Secretary's school Approval Application Form at their discretion).	<b>2226.10</b> The school calendar.		
Now in 2223.5	<b>2226.11</b> Copies of publications for distribution to applicants for admission including the statement required by 16 V.S.A. § 166.(b)(3).		
	<b>Section 2227 Approval of Application.</b>	<b>Section 2227 Recognized Accrediting Agencies</b>	

<p>Now in 2224.4</p>	<p>The Board shall approve an independent school that offers elementary or secondary education if it finds, after opportunity for hearing, that the school provides a minimum course of study pursuant to 16 V.S.A. § 906. and that it substantially complies with the Board's rules for approved independent schools.</p>	<p>(a) The Board shall recognize accrediting agencies that meet the following requirements:</p> <ol style="list-style-type: none"> <li>1. operate continuously for at least five years prior to applying for recognition under this section;</li> <li>2. maintain membership in a peer organization that supports accrediting agencies in continuous improvement and alignment with best practices in school accreditation;</li> <li>3. use a peer review process that includes evaluation by leaders of similar schools;</li> <li>4. appropriately train all staff and peer reviewers who are involved in the accreditation process;</li> <li>5. accredit schools based on publicly accessible documented standards, including mission, governance, finance, program, community of the school, administration, development, admissions, personnel, general health and safety, child and student protection and well-being, facilities, student services, school culture, and residential life (where applicable);</li> <li>6. perform a comprehensive onsite visit of any school seeking accreditation while such school is in session;</li> <li>7. require that schools seeking accreditation to have curriculum that is informed by research, document individual student progress, and have mechanisms for monitoring, assessing, and providing feedback on student progress;</li> <li>8. require that schools seeking accreditation promote an equitable, just, and inclusive community of adults and students, foster a culture of learning, and inspire students to respect and value diversity in its many forms;</li> </ol>	<p>New Language.</p>
<p>Now in 2223.3.1</p>	<p>In order to be approved, an independent school that operates a boarding program, enrolls students as boarding students, or operates a residential treatment program shall be accredited by a state or regional agency recognized by the State Board for accrediting purposes or shall be licensed as a residential child care facility by the Department for Children and Families. This requirement does not apply to an independent school that enrolls only day students.</p> <p>The Board shall make the following findings prior to approval:</p>		

		<p>9. conduct ongoing and periodic reviews as necessary throughout the accreditation cycle of the schools that it accredits and provide interim reports during the 1 accredited school's approval period that are sufficient to meet the informational needs of the Board;</p> <p>10. demonstrate substantial understanding and familiarity with state laws, policies, and regulations that apply to approved schools in Vermont; and</p> <p>11. agree to review and share evidence of practices and compliance with state-specific requirements, if requested by the Agency, during the initial or interim stages of an approved school's accreditation period, except that the Agency shall retain the responsibility to review and determine compliance with nondiscrimination provisions of these rules.</p> <p>(b) The Board shall create a publicly available list of currently recognized accrediting agencies that meet the criteria described in (b) below. Any agency seeking to be recognized by the Board under this section shall submit a letter and supporting evidence to the Board detailing the ways in which it meets each criterion. Each applicant agency shall also provide their methodology for assessing and supporting schools in meeting and advancing diversity, equity, inclusion, and other nondiscriminatory practices. Upon review of each submission, the Board shall determine whether it will recognize the accrediting agency and set the length of time that such recognition will be in effect. The Board may impose additional conditions upon a recognized accrediting agency as it deems appropriate. Applicant agencies shall be notified of a</p>	
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		<p>decision and any conditions of continued recognition in writing. The Board may remove any agency from the list of recognized accrediting agencies at any time, after finding that the agency no longer meets one or more of the criterion listed below.</p> <p>(c) The Board shall continue to recognize accrediting agencies listed in Rule 7320 until July 1, 2024.</p>	Previous sunset provision and date.
Now 2224.3.4(a)(1)	<b>2227.1</b> The description of the school in the approval application is accurate.		
Now 2224.3.4(a)(2)	<b>2227.2</b> The course of study offered is adequate to meet the educational purposes of the school and to provide a minimum course of study that is age and ability appropriate.		
Now 2224.3.4(a)(3)	<b>2227.3</b> The school has available support services necessary to meet the requirements of a minimum course of study and its educational purposes, including library services, administrative services, guidance and counseling services, and a system of records by which student progress may be assessed.		
Now 2224.3.4(a)(5)	<b>2227.4</b> The school has classroom, laboratory, library, and other facilities necessary to operate its program.		
Now 2224.3.4(a)(6)	<b>2227.5</b> The school employs professional staff who are qualified by training and experience in the areas in which they are assigned as measured by the following:		

Now 2224.3.4(a)(6)	<b>2227.5.1</b> For teachers, a minimum of a bachelor's degree in their field of instruction or substantially equivalent time in training and experience in their field of instruction.		
Now 2224.3.4(a)(6)	<b>2227.5.2</b> For all professional staff, relevant experience and/or training in other programs not related to teaching or administrative duties to which they are assigned.		
Now 2224.3.4(a)(7)	<b>2227.6</b> The school has an adequate program of continuing professional staff development as demonstrated in the application.		
Now 2224.3.4(a)(8)	<b>2227.7</b> The school employs a sufficient number of professional staff for the population served.		
Now 2224.3.4(a)(9)	<b>2227.8</b> The school substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools including nondiscrimination in admissions and operations and requirements relative to its facilities, fire drills, and the immunization of its students against disease.		
Now 2224.3.4(a)(10)	<b>2227.9</b> The school maintains a register of the daily attendance of each of its enrolled students.		
Now 2224.3.4(a)(11)	<b>2227.10</b> The school maintains an operating schedule that includes a total number of instructional hours each year that is not less than that required of a public school serving the same grades.		
Now 2224.3.4(a)(12)	<b>2227.11</b> The school has the financial capacity to carry out its stated objectives for the period of approval. For purposes of these rules, "financial capacity" means that anticipated revenue and funds on hand are sufficient to meet a school's stated objectives.		
Now 2224.3.4(a)(13)	<b>2227.12</b> The school complies with the requirements of 16 V.S.A. § 255. relating to criminal record checks and checks of the Child Protection Registry and the		



	Vulnerable Adult Abuse, Neglect, and Exploitation Registry.		
Now 2224.3.4(a)(14)	<b>2227.13</b> The school complies with legal requirements concerning nondiscriminatory school branding.		
Now 2224.3.4(a)(15)	<b>2227.14</b> The school has adopted a policy on record maintenance and retention that, at minimum, provides for the timely and confidential disposition of student records in the event of the school's closure.		
	<b>Section 2228 Length of Approval.</b>	<b>Section 2228 Tuition from Public Funds</b>	
Now 2225	The State Board may grant initial approval for not more than two years, and renewal of approval for not more than five years.		
		<b>2228.1 Tuition for Approved Schools in Vermont</b>	
		<p>Tuition shall not be paid from public funds to any independent elementary or secondary school in Vermont unless the school satisfies the requirements in Section 2223 (Requirements to Operate an Approved Independent School or Approved Independent School Ineligible to Receive Public Tuition) and Section 2224 (Application and Reapplication for Approval; Approval Process), as well as Section 2229 (Approval to Receive Public Tuition, Special Education Tuition). Notwithstanding this prohibition, tuition may be paid from public funds in cases where:</p> <p>(a) There is an order from a court or from a due process hearing pursuant to Subsection 2365.1.6 (Due Process Complaint Procedures) requiring such payment, or</p> <p>(b) The Secretary has approved an exception for a placement in an independent school pursuant to</p>	No substantive change to this section.

		Subsection 2230.1 (Exceptional Circumstances – Approval Process).	
		<b>2228.2 Tuition for Out of State Schools</b>	
		Tuition to be paid to an independent school in another state shall be made in accordance with 16 V.S.A. § 828.	No substantive change to this section.
	<b>Section 2229 Approval to Receive Public Tuition, Special Education Approval.</b>	<b>Section 2229 Approval to Receive Public Tuition; Special Education Approval</b>	
	<b>2229.1 Enrollment: Requirements for Approved Independent Schools, Students, and LEAs.</b>	<b>2229.1 Enrollment: Requirements for Approved Independent Schools, Students, and LEAs</b>	
	<p>a) Each approved independent school shall publish, maintain and follow a written enrollment policy which, at minimum, shall provide the following:</p> <p>1) That the student or the parent of a student seeking to attend the approved independent school shall voluntarily submit an application;</p> <p>2) Any special considerations or requirements for a student's acceptance for enrollment, none of which shall disadvantage a student based on the student's membership in a protected class, the student's actual or suspected disability, or the student's socioeconomic status;</p> <p>3) The school's process for making enrollment decisions when the number of applicants exceeds capacity;</p> <p>4) That a student shall be accepted for enrollment in a non-discriminatory manner and consistent with the school's written enrollment policy. No student shall be denied acceptance for enrollment if the reason for denial is that the student is disabled as defined in section 504 of the Rehabilitation Act of 1973 as</p>	<p>(a) Each approved independent school shall publish, maintain and follow a written enrollment policy which, at minimum, shall provide the following:</p> <p>1. That the student or the parent of a student seeking to attend the approved independent school shall voluntarily submit an application;</p> <p>2. Any special considerations or requirements for a student's acceptance for enrollment, none of which shall disadvantage a student based on the student's membership in a protected class, the student's actual or suspected disability, or the student's socioeconomic status;</p> <p>3. The school's process for making enrollment decisions when the number of applicants exceeds capacity;</p> <p>4. That a student shall be accepted for enrollment in a non-discriminatory manner and consistent with the school's written enrollment policy. No student shall be denied acceptance for enrollment if the reason for denial is that the student is disabled as defined in section 504 of the Rehabilitation Act of 1973 as</p>	

	<p>amended or that the student is eligible for special education or undergoing the comprehensive evaluation process for special education. No student shall be denied acceptance for enrollment on the basis of race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity or any other classification protected by federal or State law.</p> <p>b) Upon the student's acceptance for enrollment, the student's IEP team shall meet to determine how the student's services shall be provided. The approved independent school and the LEA shall follow the procedures in 2229.4, after which the student shall be enrolled in the approved independent school or, upon the decision of the hearing officer in Rule 2229.4(f), below, the IEP team shall consider an alternative enrollment for the student.</p> <p>c) When a publicly funded student seeks to attend an approved independent school after the start of the school year, upon the student's acceptance for enrollment, the student shall be provisionally enrolled consistent with the procedures in Rule 2229.4, during which time the LEA of residence shall agree to pay tuition on the student's behalf until the</p>	<p>amended or that the student is eligible for special education or undergoing the comprehensive evaluation process for special education. No student shall be denied acceptance for enrollment on the basis of the student's race, gender, color, creed, national origin, marital status, sexual orientation, gender identity or disability, or any other reason set forth in state or federal non-discrimination requirements.</p> <p>(b) Upon the student's acceptance for enrollment, the student's IEP team shall meet to determine how the student's services shall be provided. The approved independent school and the LEA shall follow the procedures in Subsection 2229.4 (Procedures for Ensuring the Provision of Special Education Services to Publicly Funded Students in Approved Independent Schools), after which the student shall be enrolled in the approved school or, upon the decision of the hearing officer in Subsection 2229.4(f), below, the IEP team shall consider an alternative enrollment for the student.</p> <p>(c) When a publicly funded student seeks to attend an approved independent school after the start of the school year, upon the student's acceptance for enrollment, the student shall be provisionally enrolled consistent with the procedures in Subsection 2229.4, during which time the LEA of residence shall agree to pay tuition on the student's</p>	<p>Mirror's EQS 2113 language: No student shall be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity as the result of, or based upon, the student's race, gender, color, creed, national origin, marital status, sexual orientation, gender identity or disability, or any other reason set forth in state or federal non-discrimination requirements.</p> <p>Inserts subsection descriptor.</p>
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	<p>procedures in 2229.4 have been completed and the student is enrolled, or until the hearing officer issues a decision pursuant to Rule 2229.4(f), below.</p> <p>d) This Rule, 2229.1, shall not apply to a therapeutic independent school.</p>	<p>behalf until the procedures in 2229.4 have been completed and the student is enrolled, or until the hearing officer issues a decision pursuant to Subsection 2229.4(f), below.</p> <p>(d) This Subsection, 2229.1, shall not apply to a therapeutic independent school.</p>	
	<b>2229.2 Staffing.</b>	<b>2229.2 Staffing</b>	
	<p>An approved independent school is not required to demonstrate that it has the resources to serve every category of special education as defined under Board rules in order to be approved or retain its approval to receive public funding for general tuition. Therapeutic independent schools shall have the capacity to serve the needs of students they are designed to serve.</p> <p>The Secretary shall establish minimum standards of services for students receiving special education services in independent schools in Vermont.</p>	<p>An approved independent school is not required to demonstrate that it has the resources to serve every category of special education as defined under Board rules in order to be approved or retain its approval to receive public funding for general tuition. Therapeutic independent schools shall have the capacity to serve the needs of students they are designed to serve.</p> <p>The Secretary shall establish minimum standards of services for students receiving special education services in independent schools in Vermont.</p>	No substantive change to this section.
	<b>2229.3 Assurances.</b>	<b>2229.3 Assurances</b>	

	<p>The approved independent school shall demonstrate that it has the ability to serve all students with disabilities by:</p> <p>(a) Demonstrating an understanding of special education requirements, including:</p> <p>(1) Provision of a free and appropriate public education in accordance with federal and State law.</p> <p>(2) Provision of education in the least restrictive environment in accordance with federal and State law.</p> <p>(3) Characteristics and educational needs associated with any of the categories of disability or suspected disability under federal and State law.</p> <p>(4) Procedural safeguards and parental rights, including discipline procedures, specified in federal and State law.</p> <p>(b) Committing to implementing the IEP of an enrolled student with special education needs, providing the required services, and appropriately documenting the services and the student's progress.</p> <p>(c) Employing or contracting with staff who have the required licensure to provide special education services.</p> <p>(d) Agreeing to communicate with the responsible LEA concerning:</p> <p>(1) Development of, and any changes to, the IEP.</p>	<p>The approved independent school shall demonstrate that it has the ability to serve all students with disabilities by:</p> <p>(a) Demonstrating an understanding of special education requirements, including:</p> <p>1. Provision of a free and appropriate public education in accordance with federal and state law.</p> <p>2. Provision of education in the least restrictive environment in accordance with federal and State law.</p> <p>3. Characteristics and educational needs associated with any of the categories of disability or suspected disability under federal and State law.</p> <p>4. Procedural safeguards and parental rights, including discipline procedures, specified in federal and State law.</p> <p>(b) Committing to implementing the IEP of an enrolled student with special education needs, providing the required services, and appropriately documenting the services and the student's progress.</p> <p>(c) Employing or contracting with staff who have the required licensure to provide special education services.</p> <p>(d) Agreeing to communicate with the responsible LEA concerning:</p> <p>1. Development of, and any changes to, the IEP.</p>	<p>No substantive change to this section.</p>
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	<p>(2) Services provided under the IEP and recommendations for a change in the services provided.</p> <p>(3) The student's progress.</p> <p>(4) Maintenance of the student's enrollment in the independent school.</p> <p>(5) Identification of students with suspected disabilities.</p> <p>(e) Committing to participate in dispute resolution as provided under federal and State law.</p>	<p>2. Services provided under the IEP and recommendations for a change in the services provided.</p> <p>3. The student's progress.</p> <p>4. Maintenance of the student's enrollment in the independent school.</p> <p>5. Identification of students with suspected disabilities.</p> <p>(e) Committing to participate in dispute resolution as provided under federal and State law.</p>	
	<p><b>2229.4 Procedure for Ensuring the Provision of Special Education Services to Publicly Funded Students in Approved Independent Schools.</b></p>	<p><b>2229.4 Procedure for Ensuring the Provision of Special Education Services to Publicly Funded Students in Approved Independent Schools</b></p>	
	<p>a) Upon the acceptance for enrollment of a student with an individualized education program in an approved independent school, the LEA of the student's residence shall convene an IEP or 504 team meeting within 30 days. When practical, the meeting shall be held prior to the start of the academic year in which the student is enrolled. The approved independent school shall designate personnel to participate in the IEP or 504 meeting. At the meeting, the team, which includes the parent, and the student where appropriate, shall determine how to ensure the provision of a free and appropriate public education in accordance with the student's IEP.</p>	<p>(a) Upon the acceptance for enrollment of a student with an individualized education program in an approved independent school, the LEA of the student's residence shall convene an IEP or 504 team meeting within 30 days. When practical, the meeting shall be held prior to the start of the academic year in which the student is enrolled. The approved independent school shall designate personnel to participate in the IEP or 504 meeting. At the meeting, the team, which includes the parent, and the student where appropriate, shall determine how to ensure the provision of a free and appropriate public education in accordance with the student's IEP.</p>	<p>No substantive changes to this section.</p>

	<p>b) The LEA and the approved independent school together with the student's IEP team shall work collaboratively to ensure the student's services are provided in accordance with State and federal law. Services shall be provided in a timely manner, beginning with the first day of the school year when possible. It is the intent of the State Board that the LEA and the approved independent school will identify solutions that minimize the loss of instructional hours to the student. The Agency shall provide technical assistance to the LEA and the approved independent school upon request.</p> <p>c) For placement purposes under the IDEA, the IEP team shall ensure the IEP process reflects the student's choice of enrollment in the approved independent school, notwithstanding SBE Rule 2364.3(a)(2). In this context, "placement" refers not to the specific site of the educational placement, but to the provision of special education and related services.</p> <p>d) The student's special education and related services shall be provided in the least restrictive environment.</p> <p>e) To ensure the provision of services in the student's IEP, the approved independent school and the LEA may use any or all of the methods listed below to ensure the provision of those services, including:</p>	<p>(b) The LEA and the approved independent school together with the student's IEP team shall work collaboratively to ensure the student's services are provided in accordance with State and federal law. Services shall be provided in a timely manner, beginning with the first day of the school year when possible. It is the intent of the Board that the LEA and the approved independent school will identify solutions that minimize the loss of instructional hours to the student. The Agency shall provide technical assistance to the LEA and the approved independent school upon request.</p> <p>(c) For placement purposes under the IDEA, the IEP team shall ensure the IEP process reflects the student's choice of enrollment in the approved independent school, notwithstanding Subsection 2364.3(a)(2) (Placements). In this context, "placement" refers not to the specific site of the educational placement, but to the provision of special education and related services.</p> <p>(d) The student's special education and related services shall be provided in the least restrictive environment.</p> <p>(e) To ensure the provision of services in the student's IEP, the approved independent school and the LEA may use any or all of the methods listed below to ensure the provision of those services, including:</p>	<p>Insert Subsection Descriptor.</p>
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	<p>1. The approved independent school recruiting and hiring special education or other professional or paraprofessional staff;</p> <p>2. The approved independent school contracting directly with service providers to provide the services at the independent school if the services are not otherwise available at the independent school.</p> <p>3. The approved independent school contracting with the LEA to provide the services.</p> <p>4. The LEA providing the services at a public school operated by the LEA or another public school.</p> <p>f) If there is a dispute between the LEA and the approved independent school over whether the student's special education services can be provided in accordance with the student's IEP at the independent school or otherwise, the LEA shall initiate a hearing before an independent hearing officer, the costs of which shall be borne equally between the LEA and the independent school, within 30 days of the impasse.</p> <p>g) If the hearing officer determines the approved independent school is unable to provide the required IEP services due to an inability to retain qualified staff, the LEA shall immediately convene an IEP meeting to consider alternatives.</p> <p>1. The approved independent school shall not be subject to any disciplinary action or revocation of its</p>	<p>1. The approved independent school recruiting and hiring special education or other professional or paraprofessional staff;</p> <p>2. The approved independent school contracting directly with service providers to provide the services at the independent school if the services are not otherwise available at the independent school.</p> <p>3. The approved independent school contracting with the LEA to provide the services.</p> <p>4. The LEA providing the services at a public school operated by the LEA or another public school.</p> <p>(f) If there is a dispute between the LEA and the approved independent school over whether the student's special education services can be provided in accordance with the student's IEP at the independent school or otherwise, the LEA shall initiate a hearing before an independent hearing officer, the costs of which shall be borne equally between the LEA and the independent school, within 30 days of the impasse.</p> <p>(g) If the hearing officer determines the approved independent school is unable to provide the required IEP services due to an inability to retain qualified staff, the LEA shall immediately convene an IEP meeting to consider alternatives.</p> <p>1. The approved independent school shall not be subject to any disciplinary action or revocation of its approval by the Board under Subsection 2226.2</p>	<p>Inserts subsection descriptor.</p>
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	<p>approval by the Board under Rule 2223.8 due to its failure to enroll or continue to enroll the student.</p> <p>h) This Rule, 2229.4, shall not apply to a therapeutic independent school.</p>	<p>(Revocation or Suspension of Approval) due to its failure to enroll or continue to enroll the student.</p> <p>h) This Subsection, 2229.4, shall not apply to a therapeutic independent school.</p>	
	<b>2229.5 Out-of-State Programs.</b>	<b>2229.5 Out-of-State Programs</b>	
	<p>(a) Unless otherwise determined by the Board, in order for an out-of-state independent school to be approved to receive public funds for special education purposes by the Board, the school shall be approved by the host state for the purpose of providing special education and related services to children with disabilities within that state. Any limitation by the host state on an independent school's special education approval, such as by category of disability served, or other comparable standard, shall also apply to the school's special education approval in Vermont.</p> <p>(b) Rates paid for tuition, room, and board for students receiving special education in out-of-state schools shall not exceed the allowable costs approved by the authorized body in the state where the school is located, except in exceptional circumstances approved by the Secretary.</p>	<p>(a) Subject to the provisions of 16 V.S.A §828, in order for an out-of-state independent school to be approved to receive public funds for special education purposes by the Board, the school shall be approved under the rules of its jurisdiction for the purpose of providing special education and related services to children with disabilities within its jurisdiction. Any limitation by the jurisdiction on an independent school's special education approval, such as by category of disability served, or other comparable standard, shall also apply to the school's special education approval in Vermont.</p> <p>(b) Rates paid for tuition, room, and board for students receiving special education in out-of-state schools shall not exceed the allowable costs approved by the authorized body in the jurisdiction where the school is located, except in exceptional circumstances approved by the Secretary.</p>	<p>Ensures consistency with 2228.2 and 16 V.S.A §828. Substitutes "jurisdiction" for state or country references in §828.</p>
	<b>2229.6 Approval Procedures to Receive Public Funds</b>	<b>2229.6 Approval Procedures to Receive Public Funds</b>	

<p>LANGUAGE DELETED.</p>	<p>(a) Application for public funds approval shall be made at the time of application under SBE Rule 2223 et seq. An independent school that has already obtained independent school approval from the Board may at any time submit an application for public tuition approval to the Secretary.</p> <p>(b) Application for special education funding approval shall be submitted in writing to the Secretary in accordance with the format prescribed by the Secretary.</p> <p>(c) The procedures for public tuition approval shall be the same as those for approval in accordance with SBE Rule 2223 et seq. To the extent possible, these procedures shall occur simultaneously.</p>	<p>(a) Application for public funds approval shall be made at the time of application under Sections 2224 (Application and Reapplication for Approval; Approval Process). A school that has already obtained approval from the Board may at any time submit an application for public tuition approval to the Secretary.</p> <p>(b) The procedures for public tuition approval shall be the same as those for approval in accordance with Section 2224 (Application and Reapplication for Approval; Approval Process). To the extent possible, these procedures shall occur simultaneously.</p>	<p>Section Descriptor Added.</p> <p>DELETES FORMER (b). Unnecessary language.</p> <p>Section Descriptor Added.</p>
	<p><b>2229.7 Notification.</b></p>	<p><b>2229.7 Duty to Notify</b></p>	<p><b>Clarify Title.</b></p>
	<p>After receiving approval for public tuition, an approved independent school shall notify the Secretary within a reasonable time of any significant changes to its special education program, professional staff, governance, financial capacity, or facilities. The Secretary may, upon such notification, gather additional information from the school, including by means of a site visit. As a result, the Secretary may return to the Board for a change in the school's approval for public tuition purposes. If the Secretary petitions the Board under Rule 2223.8 for a change to a school's approval status, the Council of Independent Schools and the subject independent</p>	<p>After receiving approval for public tuition, an approved independent school shall notify the Secretary within a reasonable time of any significant changes to its special education program, professional staff, governance, financial capacity, or facilities. The Secretary may, upon such notification, gather additional information from the school, including by means of a site visit. As a result, the Secretary may recommend the Board change in the school's approval for public tuition purposes. The Secretary shall employ the same procedures described in Subsection 2226.2.2 (Investigation; Due Process Hearing) to recommend a change to a</p>	<p>Replace "return to the Board" with "recommend."</p>

	school shall be notified and have an opportunity to be heard by the Board. If the school disagrees with the proposed change to its approval status, the Board shall hear the matter in accordance with the requirements of SBE Rule 1230, et seq.	school's approval status. The Board shall provide a hearing on the matter in accordance with Subsection 2226.2.2 and the requirements of Sections 1230, et seq.	
	<b>2229.8 Minimum Level of Service.</b>	<b>2229.8 Minimum Level of Service</b>	
	Approved independent schools shall be deemed to offer a minimum standard of service to a child, as required by 16 V.S.A. § 2973., if those services are offered according to a written agreement with the sending responsible agency, as required by SBE Rule 2231.	Approved independent schools shall be deemed to offer a minimum standard of service to a child, as required by 16 V.S.A. § 2973., if those services are offered according to a written agreement with the sending responsible agency, as required by Section 2231 (Written Agreements Required).	No substantive change to this section.  Section Descriptor Added.
	<b>Section 2230 Placement Prohibition.</b>	<b>Section 2230. Placement Prohibition</b>	
	No responsible agency, as defined by SBE Rule 2360.3, or LEA shall make a special education placement in an independent school that has not been approved to receive public tuition pursuant to the conditions in Rule 2229, unless the placement is pursuant to:  (a) Rule 2230.1; (b) A court order; or (c) A hearing officer's order.	No responsible agency, as defined by Subsections 2360.3 (Child Find), or LEA shall make a special education placement in an approved independent school ineligible to receive public funds pursuant to the conditions in Section 2229 (Approval to Receive Public Tuition; Special Education Approval), unless the placement is pursuant to:  (a) Subsection 2230.1 (Exceptional Circumstances – Approval Process); (b) A court order; or (c) A hearing officer's order.	No substantive change to this section. Section Descriptor Added.  Section Descriptor Added.  Section Descriptor Added.
	<b>2230.1 Exceptional Circumstances – Approval Process.</b>	<b>2230.1 Exceptional Circumstances – Approval Process</b>	

	<p>Upon application by a responsible LEA, the Secretary may permit, in exceptional circumstances, a special education placement in an independent school that is approved pursuant to SBE Rule 2223, et seq. but that has not been approved to receive public tuition under Rule 2229. In instances in which the Secretary grants such approval, tuition and associated otherwise allowable costs shall be reimbursable under subchapter 2 of Chapter 101 of Title 16 of the Vermont Statutes Annotated. Any person aggrieved by the Secretary's decision may file an appeal with the State Board pursuant to 16 V.S.A. § 828.</p> <p>(a) Exceptional circumstances exist when:</p> <p>(1) After reasonable efforts, the LEA cannot locate an appropriate public or independent school approved for special education purposes pursuant to SBE Rule 2229 to serve children with the category of disability under which the child was determined to be eligible for special education; and</p> <p>(2) The proposed placement is deemed appropriate by the child's IEP team.</p> <p>(b) The Secretary may specify conditions under which the placement is to be carried out.</p>	<p>Upon application by a responsible LEA, the Secretary may permit, in exceptional circumstances, a special education placement in an approved ineligible to receive public funds school that is approved pursuant to Section 2224 (Application and Reapplication for Approval; Approval Process) but that has not been approved to receive public tuition under Section 2229 (Approval to Receive Public Tuition; Special Education Approval). In instances in which the Secretary grants such approval, tuition and associated otherwise allowable costs shall be reimbursable under subchapter 2 of Chapter 101 of Title 16 of the Vermont Statutes Annotated. Any person aggrieved by the Secretary's decision may file an appeal with the Board pursuant to 16 V.S.A. § 828.</p> <p>(a) Exceptional circumstances exist when:</p> <p>1. After reasonable efforts, the LEA cannot locate an appropriate public or independent school approved for special education purposes pursuant to Section 2229 to serve children with the category of disability under which the child was determined to be eligible for special education; and</p> <p>2. The proposed placement is deemed appropriate by the child's IEP team.</p> <p>(b) The Secretary may specify conditions under which the placement is to be carried out.</p>	<p>No substantive change to this section.</p> <p>Section Descriptor Added.</p> <p>Section Descriptor Added.</p>
	<p><b>Section 2231 Written Agreements Required.</b></p>	<p><b>Section 2231. Written Agreements Required</b></p>	
	<p><b>2231.1 Agreement as to Costs.</b></p>	<p><b>2231.1 Agreement as to Costs</b></p>	

	<p>(a) In order to obtain approval to receive public tuition, an independent school shall assure the State Board that, prior to enrolling a child pursuant to Rule 2229.1, the school will enter into a written agreement with the LEA committing to the requirements set forth in SBE Rule 2229.3 and ensuring that qualified school personnel will attend planning and all IEP meetings for the student. The agreement shall outline tuition, room, board, and other costs associated with the child's attendance. For children on an IEP who are placed by a state agency or a designated community mental health agency, or any other agency defined by the Secretary, in accordance with 16 V.S.A. § 2948., the agreement shall be with the Secretary. In the instance of an emergency placement, such provisions shall be agreed upon within 30 days of the child's enrollment.</p> <p>(b) The Secretary shall consult with independent schools in the State and determine maximum rates for tuition, and room and board for residential placements. These rates shall be published each year by November 30. Any amount charged by an approved independent school for tuition shall not exceed the school's actual or anticipated costs of providing special education services to the student and shall not exceed the maximum rates set by the Secretary, provided that the Secretary may permit charges in excess of the maximum rates if the Secretary deems it warranted.</p>	<p>(a) In order to obtain approval to receive public tuition, an approved school shall assure the Board that, prior to enrolling a child pursuant to Subsection 2229.1 (Enrollment: Requirements for Approved Independent Schools, Students, and LEAs), the school will enter into a written agreement with the LEA committing to the requirements set forth in Subsection 2229.3 (Assurances) and ensuring that qualified school personnel will attend planning and all IEP meetings for the student. The agreement shall outline tuition, room, board, and other costs associated with the child's attendance. For children on an IEP who are placed by a state agency or a designated community mental health agency, or any other agency defined by the Secretary, in accordance with 16 V.S.A. § 2948., the agreement shall be with the Secretary. In the instance of an emergency placement, such provisions shall be agreed upon within 30 days of the child's enrollment.</p> <p>(b) The Secretary shall consult with independent schools in the state and determine maximum rates for tuition, and room and board for residential placements. These rates shall be published each year by November 30. Any amount charged by an approved school for public tuition shall not exceed the school's actual or anticipated costs of providing special education services to the student and shall not exceed the maximum rates set by the Secretary, provided that the Secretary may permit charges in excess of the maximum rates if the Secretary deems it warranted.</p>	<p>No substantive change to this section.</p> <p>Section Descriptor Added.</p> <p>Section Descriptor Added.</p>
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	<p>(c) An approved independent school that enrolls a student with an IEP pursuant to Rule 2229.1 may bill the responsible LEA for the excess special education costs beyond those covered by general tuition. Reimbursement of the excess costs shall be based on the direct-cost rates approved by the Secretary for services actually provided to the student consistent with the Agency of Education Technical Manual for special education cost accounting.</p> <p>(d) An approved independent school that enrolls a student under SBE Rule 2229.1 shall provide documentation to the Secretary in order to ensure that the amounts charged are reasonable in relation to special education services provided by the school.</p>	<p>(c) An approved independent school that enrolls a student with an IEP pursuant to Subsection 2229.1 may bill the responsible LEA for the excess special education costs beyond those covered by general tuition. Reimbursement of the excess costs shall be based on the direct-cost rates approved by the Secretary for services actually provided to the student consistent with the Agency of Education Technical Manual for special education cost accounting.</p> <p>(d) An approved independent school that enrolls a student under Subsection 2229.1 shall provide documentation to the Secretary in order to ensure that the amounts charged are reasonable in relation to special education services provided by the school.</p>	
	<b>2231.2 Agreement as to Non-Instructional Services.</b>	<b>2231.2 Agreement as to Non-Instructional Services.</b>	
	<p>In order to obtain approval to receive public tuition, an independent school shall assure the Board that, within thirty days of enrolling a child with an IEP, the school will enter into a written agreement with the sending LEA or other responsible agency as to the division of responsibility for performance of non-instructional services, including compliance with special education procedural requirements. For children placed by a state agency or a designated community mental health agency, or another agency defined by the Secretary, this agreement shall be with the LEA that has educational planning responsibility for the child.</p>	<p>In order to obtain approval to receive public tuition, an approved school shall assure the Board that, within thirty days of enrolling a child with an IEP, the school will enter into a written agreement with the sending LEA or other responsible agency as to the division of responsibility for performance of non-instructional services, including compliance with special education procedural requirements. For children placed by a state agency or a designated community mental health agency, or another agency defined by the Secretary, this agreement shall be with the LEA that has educational planning responsibility for the child.</p>	No substantive change to this section.
	<b>Section 2232 Rate Approval for Therapeutic Approved Independent Schools.</b>	<b>Section 2232. Rate Approval for Therapeutic Approved Independent Schools.</b>	

	<p>(a) The Secretary shall set, after consultation with independent schools, the maximum tuition rate to be paid by the Agency and supervisory unions or school districts to therapeutic independent schools. The rate for each therapeutic independent school shall be no more than the costs that are reasonably related to the level of services provided by the school.</p> <p>(b) If a therapeutic independent school does not submit an application for rate approval by November 15, the most recent approved rate will be in effect for the following school year. The Secretary may review an approved rate at any time. An approved rate may be reviewed at any time on request of the school based on extraordinary circumstances. Therapeutic schools will supply information as requested by the Secretary.</p> <p>(c) A therapeutic school's most recently approved rate shall be adjusted annually by the Secretary according to the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis. The Secretary shall announce the inflation rate to allow for sufficient time for submission of an application for approval of a new rate under subsection (d) in the event the therapeutic school determines such an application is needed. The annually-inflated rate shall become the most recently approved rate.</p>	<p>(a) The Secretary shall set, after consultation with independent schools, the maximum tuition rate to be paid by the Agency and supervisory unions or school districts to therapeutic independent schools. The rate for each therapeutic independent school shall be no more than the costs that are reasonably related to the level of services provided by the school.</p> <p>(b) If a therapeutic independent school does not submit an application for rate approval by November 15, the most recent approved rate will be in effect for the following school year. The Secretary may review an approved rate at any time. An approved rate may be reviewed at any time on request of the school based on extraordinary circumstances. Therapeutic schools will supply information as requested by the Secretary.</p> <p>(c) A therapeutic school's most recently approved rate shall be adjusted annually by the Secretary according to the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis. The Secretary shall announce the inflation rate to allow for sufficient time for submission of an application for approval of a new rate under subsection (d) in the event the therapeutic school determines such an application is needed. The annually-inflated rate shall become the most recently approved rate.</p>	<p>No substantive change to this section.</p>
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	<p>(d) A therapeutic school requesting a new rate shall submit an application for approval of a new rate to the Secretary by November 15 for tuition, related services, room, and board based upon the actual or anticipated costs that are reasonably related to providing educational services. Schools that also receive rates from the Agency of Human Services shall submit an application for approval of a new rate to the Secretary by May 1. Reported costs shall be only those that are net of other available restricted revenue sources. To demonstrate that the rate requested by the therapeutic school meets this standard, the therapeutic school shall submit to the Secretary the following:</p> <p>(1) Costs for each of the following categories, reported at the general ledger account description level, submitted in accordance with the Generally Accepted Accounting Principles published by the Financial Accounting Standards Board:</p> <ul style="list-style-type: none"> <li>(A) Salaries for all employees and full-time equivalents as applicable</li> <li>(B) Program-related Contractual Services</li> <li>(C) Operations-related Contractual Services</li> <li>(D) General Operating</li> <li>(E) Program</li> <li>(F) Travel/Transportation</li> <li>(G) Building - Direct</li> <li>(H) Building - Allocated</li> <li>(I) Admin I - Allocated</li> <li>(J) Admin II - Allocated</li> <li>(K) Fringe - Allocated</li> </ul>	<p>(d) A therapeutic school requesting a new rate shall submit an application for approval of a new rate to the Secretary by November 15 for tuition, related services, room, and board based upon the actual or anticipated costs that are reasonably related to providing educational services. Schools that also receive rates from the Agency of Human Services shall submit an application for approval of a new rate to the Secretary by May 1. Reported costs shall be only those that are net of other available restricted revenue sources. To demonstrate that the rate requested by the therapeutic school meets this standard, the therapeutic school shall submit to the Secretary the following:</p> <p>1. Costs for each of the following categories, reported at the general ledger account description level, submitted in accordance with the Generally Accepted Accounting Principles published by the Financial Accounting Standards Board:</p> <ul style="list-style-type: none"> <li>(A) Salaries for all employees and full-time equivalents as applicable</li> <li>(B) Program-related Contractual Services</li> <li>(C) Operations-related Contractual Services</li> <li>(D) General Operating</li> <li>(E) Program</li> <li>(F) Travel/Transportation</li> <li>(G) Building - Direct</li> <li>(H) Building - Allocated</li> <li>(I) Admin I - Allocated</li> <li>(J) Admin II - Allocated</li> <li>(K) Fringe - Allocated</li> </ul>	
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	<p>(2) The school's proposed operational capacity, which shall be supported by a narrative that describes how the proposal reflects relevant circumstances including three-year historic enrollment, student acuity or changes in student acuity, availability of faculty and staff, physical space, anticipated demand for placements or change in anticipated demand for placements, and other considerations.</p> <p>(e) A therapeutic school submitting an application for rate approval for the first time may submit the application at any time pursuant to this subsection.</p> <p>(f) If the Secretary determines an application for new rate approval submitted under subsection (d) is incomplete, then the therapeutic school shall have 10 working days to complete the application following notice that its application is incomplete.</p> <p>(g) The Secretary shall evaluate each element of the application for new rate approval submitted pursuant to subsection (d) and determine whether the school has demonstrated that the cost associated with each element is reasonably related to the level of services provided by the school. In determining whether a cost is reasonably related to the level of services, the Secretary will consider the following: direct-cost rates approved by the Secretary pursuant to 16 V.S.A. § 2973.(b), costs approved for other therapeutic schools, regional differences in costs, demonstrated difficulty filling certified or licensed positions, tenure of faculty and staff, student acuity, educational model, students' need for stability in</p>	<p>2. The school's proposed operational capacity, which shall be supported by a narrative that describes how the proposal reflects relevant circumstances including three-year historic enrollment, student acuity or changes in student acuity, availability of faculty and staff, physical space, anticipated demand for placements or change in anticipated demand for placements, and other considerations.</p> <p>(e) A therapeutic school submitting an application for rate approval for the first time may submit the application at any time pursuant to this subsection.</p> <p>(f) If the Secretary determines an application for new rate approval submitted under subsection (d) is incomplete, then the therapeutic school shall have 10 working days to complete the application following notice that its application is incomplete.</p> <p>(g) The Secretary shall evaluate each element of the application for new rate approval submitted pursuant to subsection (d) and determine whether the school has demonstrated that the cost associated with each element is reasonably related to the level of services provided by the school. In determining whether a cost is reasonably related to the level of services, the Secretary will consider the following: direct-cost rates approved by the Secretary pursuant to 16 V.S.A. § 2973.(b), costs approved for other therapeutic schools, regional differences in costs, demonstrated difficulty filling certified or licensed positions, tenure of faculty and staff, student acuity, educational model, students' need for stability in educational placement, and other aspects of program</p>	
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	<p>educational placement, and other aspects of program and student need documented in the application. Prior to conducting cost comparisons with applicant data, the Secretary shall:</p> <p>(1) Establish standards for developing and applying a database of comparable information to be utilized in rate determinations, and publish the standards on the Agency's website.</p> <p>(2) Annually update the database of comparable information.</p> <p>(3) Implement a procedure to document and retain the process and basis for each determination, including the comparable data applied.</p> <p>(h) The Secretary shall determine the rate on a per-student basis by dividing the total costs determined in subsection (g) by the school's approved operational capacity, which shall be determined by the Secretary from the information provided in subsection (d)(2).</p> <p>(i) The Secretary shall notify a therapeutic school that has submitted an application for new rate approval pursuant to subsection (d) of the final rate approval by January 15.</p> <p>(j) After the Secretary approves a rate for a therapeutic school, the school shall not exceed that rate until such time as a new tuition rate is approved by the Secretary. In the case of a service required by a student's IEP that is not included within the school's approved rate, the LEA shall decide whether to contract for the service with the therapeutic</p>	<p>and student need documented in the application. Prior to conducting cost comparisons with applicant data, the Secretary shall:</p> <ol style="list-style-type: none"> <li>1. Establish standards for developing and applying a database of comparable information to be utilized in rate determinations and publish the standards on the Agency's website.</li> <li>2. Annually update the database of comparable information.</li> <li>3. Implement a procedure to document and retain the process and basis for each determination, including the comparable data applied.</li> </ol> <p>(h) The Secretary shall determine the rate on a per-student basis by dividing the total costs determined in subsection (g) by the school's approved operational capacity, which shall be determined by the Secretary from the information provided in subsection (d)(2).</p> <p>(i) The Secretary shall notify a therapeutic school that has submitted an application for new rate approval pursuant to subsection (d) of the final rate approval by January 15.</p> <p>(j) After the Secretary approves a rate for a therapeutic school, the school shall not exceed that rate until such time as a new tuition rate is approved by the Secretary. In the case of a service required by a student's IEP that is not included within the school's approved rate, the LEA shall decide whether to contract for the service with the therapeutic</p>	
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	<p>school. The LEA shall provide notice of its decision to the Secretary within 5 days.</p> <p>(k) A therapeutic school that is not satisfied with the final rate may request reconsideration by the Secretary. Requests for reconsideration shall be made in writing to the Secretary within 30 days of the final rate approval. Upon receiving the Secretary's answer regarding reconsideration, if the therapeutic school is not satisfied, it may file an appeal with the State Board in accordance with the requirements of SBE Rule 1230, et seq. Alternatively, a therapeutic school may appeal to the State Board pursuant to SBE Rule 1230, et seq. without first seeking reconsideration by the Secretary. The State Board's determination of the appeal shall be final.</p>	<p>school. The LEA shall provide notice of its decision to the Secretary within 5 days.</p> <p>(k) A therapeutic school that is not satisfied with the final rate may request reconsideration by the Secretary. Requests for reconsideration shall be made in writing to the Secretary within 30 days of the final rate approval. Upon receiving the Secretary's answer regarding reconsideration, if the therapeutic school is not satisfied, it may file an appeal with the Board in accordance with the requirements of Section 1230, et seq. Alternatively, a therapeutic school may appeal to the Board pursuant to Section 1230, et seq. without first seeking reconsideration by the Secretary. The Board's determination of the appeal shall be final.</p>	
	<b>Section 2233 Standards and Regulations.</b>	<b>Section 2233. Standards and Regulations</b>	
	The State Board shall afford the opportunity for approved independent schools to participate in the development and revision of State standards that apply to independent schools.	The Board shall afford the opportunity for approved schools to participate in the development and revision of state standards that apply to approved schools.	No substantive change to this section.
		<b>Section. 2276 Effective Date</b>	
		<p>Amendments to all Sections shall become effective 15 days after adoption is complete in accordance with 3 V.S.A. §845(d), except as follows:</p> <p>(a) Section 2224 (Application and Reapplication for Approval; Approval Process) will take effect on July 1, 2024;</p> <p>(b) Section 2223 [except for Subsection 2223.4 (Annual Compliance Assurance) and Subsections 2223.3.3(b) (Instructional Strategies) and</p>	<p>This includes new accrediting agency recognition process and new annual compliance assurance requirement.</p> <p>Except for selected subsections (see below and above for explanation) the updated Operational Requirements and clarified Application &amp; Approval Process will begin on July 1, 2024.</p>

		<p>2223.3.3(c)(1) (Curriculum Content)] will take effect on July 1, 2024; and</p> <p>(c) Subsections 2223.3.3(b) and 2223.3.3(c)(1) will take effect on July 1, 2025.</p>	<p>Requirements that mirror EQS requirements for instructional strategies and curriculum including ethnic and minority studies begins July 1, 2025 (parallel with EQS).</p>
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